(4)

No. 89-1330

Supreme Court, U.S.
FILED
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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS, *et al.*,
Petitioners,

v.

TIMOTHY A. BROWN,
Respondent.

On Writ of Certiorari to the Court of Appeals for the Fourth Circuit

---

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED FEBRUARY 15, 1990
CERTIORARI GRANTED JUNE 18, 1990

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 88-2876

TIMOTHY BROWN,
Plaintiff-Appellee,

v.

ROBERT J. LOWEN; F. ELWOOD KYSER;
INTERNATIONAL ORGANIZATION OF MASTERS,
MATES AND PILOTS,
Defendants-Appellants.

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
7/26/88	Civil case docketed. (kac)
7/26/88	Memorandum in support [1070325-1] of motion for stay pending appeal [1070293-1] filed by Appellant International Organ, Appellant F. Elwood Kyser, Appellant Robert J. Lowen. [88-2876] (kac)
7/26/88	Oral motion filed directly with HLW by Appellant International Organ, Appellant F. Elwood Kyser, Appellant Robert J. Lowen to expedite oral argument. [88-2876] (kac)
7/26/88	Oral court order filed by HLW mooting motion for stay pending appeal [1070293-1], granting motion to expedite oral argument [1070349-1]—simultaneous informal briefs are to be filed by 07/28/88. [88-2876] (kac)
7/27/88	Case calendared for oral argument. [88-2876] (ski)

DATE	PROCEEDINGS
7/28/88	Court order filed by DSR, Authoring Judge, HEW, KKH, Dissenting Judge denying motion for stay pending appeal [1070293-1] Copies to all counsel. [88-2876] (kac)
7/28/88	Oral argument heard. Courtroom Deputy: dad. [88-2876] (ca)
7/28/88	Brief filed by Appellant. Type of Service: Fax Machine Copies of brief: 4 # pages. 24. Sufficient [Y/N]: y. [88-2876] (wtc)
7/28/88	Brief filed by Appellee. Type of Service: Fam Machine Copies: 4 # pages: 37. Sufficient [Y/N]: y. [88-2876] (wtc)
7/28/88	Informal brief filed by Appellee Timothy A. Brown [1134900-1] [88-2876] (kac)
9/14/88	Published authored opinion filed. Panel: DSR, Authoring Judge, HEW, KKH, Dissenting Judge; Decision: affirmed [88-2876] (kac)
9/14/88	Judgment order filed. [88-2876] (kac)
9/28/88	Petition filed by Appellant International Organ, Appellant F. Elwood Kyser, Appellant Robert J. Lowen for rehearing [1147250-1], for suggestion for rehearing in banc [1147250-2] [88-2876] (kac)
10/31/88	Federal Reporter Citation: 857 F.2d 216. [88-2876] (jle)
11/14/88	Response [1163898-1] to motion for rehearing [1147250-1], motion for suggestion for reh in banc [1147250-2] filed by Appellee Timothy A. Brown. [88-2876] (kac)
1/11/89	Court order filed DSR granting motion for rehearing [1147250-1], granting motion for suggesting for reh in banc [1147250-2] Copies to all counsel. [88-2876] (kac)
1/11/89	Case reopened. [88-2876] (kac)

DATE	PROCEEDINGS
1/20/89	Informal brief filed by Appellant International Organ, Appellant F. Elwood Kyser, Appellant Robert J. Lowen [1186144-1] [88-2876] (AN ORIGINAL AND 11 EXTRA COPIES AS REQUESTED IN ORDER ENTERED ON (1/11/89) (kac)
1/27/89	Motion filed by Potential Amicus Curiae Secretary of Labor to file amicus brief [1188680-1] (88-2876] (kac)
1/30/89	Corrected motion filed by Amicus Curaie Secretary of Labor to file amicus brief [1188865-1] [88-2876] (sn)
2/1/89	Response [1190105-1] to motion to file amicus brief [1188680-1], motion to file amicus brief [1188865-1] filed by Appellant. [88-2876) (sn)
2/3/89	Court order filed by HLW granting motion to file amicus brief [1188680-1], granting corrected motion to file amicus brief [1188865-1]—amicus brief shall be served and filed on or before 3-2-89 and the appellants may file a response to the amicus brief on or before 3-23-89. Copies to all counsel. [88-2876] (kac)
3/1/89	Amicus curiae brief filed by Amicus Curiae Secretary of Labor. Type of Service: CS Copies of brief: 12. Sufficient [Y/N]. y. [88-2876] (wtc)
3/2/89	Case calendared for oral argument. [88-2876] (ski)
3/13/89	Federal Reporter Citation: 865 F.2d 1444. [88-2876] (st)
3/20/89	Motion filed by Appellee Timothy A. Brown requesting separate oral argument [1207137-1] [88-2876] (wants to divide oa with amicus counsel) (kac)

DATE	PROCEEDINGS
3/31/89	Response [1211477-1] to motion requesting separate oral argument [1207137-1] filed by Appellant International Organ, Appellant F. Elwood Kyser, Appellant Robert J. Lowen. [88-2876] (kac)
3/31/89	Court order filed by SJE granting motion requesting separate oral argument [1207137-1] Copies to all counsel. [88-2876] (kac)
4/10/89	Oral argument heard. Courtroom Deputy: dad. [88-2876] (dad)
11/17/89	Published per curiam opinion filed. [88-2876] (kac)
11/17/89	Judgment order filed. Terminated on the Merits after Oral Hearing; Affirmed; Written, Unsigned, Published. Heard en banc; DSR, Authoring Judge; JDP, Dissenting Judge; KKH, HLW, HEW, FDM, JMS, SJE, RFC, JHW, WWW. [88-2876] (kac)
11/22/89	Bill of costs filed by Appellee Timothy A. Brown. [88-2876] (rm)
1/5/90	Federal Reporter Citation: 889 F.2d 58. [88-2876] (ejm)
1/25/90	Mandate issued. [88-2876] (rm)
1/25/90	Bill of costs taxed by clerk in the amount of $54.00; cc to attorney for Appellee. [88-2876] (rm)
2/26/90	Supreme Court notice received of filing of petition for certiorari on 02/15/90. Supreme Court No. 89-1330. [88-2876] (rm)
6/21/90	Supreme Court order granting certiorari received. Supreme Court no. 89-1330 filed in Supreme Court on 06/18/90. [88-2876] (ch)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Case No. JFM 88-1994

TIMOTHY BROWN,
Plaintiff,

v.

ROBERT J. LOWEN, F. ELWOOD KYSER and
INTERNATIONAL ORGANIZATION OF MASTERS,
MATES, AND PILOTS,
Defendants.

RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
1988		
July 11	1	Complaint.
July 11	2	Motion of Plaintiff for a Preliminary Injunction, Memorandum, Affidavit (BROWN) and Exhibits A-H & PROPOSED Order. (c/s)
July 12	3	Summons issued. (SERVED: IOMMP—7/17/88—see #6)
July 20	4	Motion of Plaintiff for a Temporary Restraining Order, Attachments, Exhibits A-I, Affidavit & PROPOSED Temporary Restraining Order. (c/s—Howard, J.—chambers Judge)
July 21	5	Memorandum of Defendants' in Opposition to Motion of Plaintiff for Preliminary Injunction, Affidavits (2) & Exhibits A-G. (c/s)
July 25	6	Affidavit of service.

DATE	NR.	PROCEEDINGS
1988		
July 25	—	Hearing on Motion of Plaintiff for Temporary Restraining Order held before (Motz, J)—Motion "GRANTED"—for reasons stated in open Court. (Order to be submitted by the Court) (Tape: Staffer)
July 26	8	Order (Motz, J.) dated 7/25/88, that Defendant's shall within forty-eight hours deliver a set of Cheshire labels bearing the names and addresses of all members of the IOMMP who are eligible to vote in upcoming election of officers to a mailing service, as set forth; and that Plaintiff shall pay to Defendant IOMMP $100 for the cost of preparing a set of mailing labels. (cc's hand del'd in court 7/25/88) (EOD 7/26/88 gez)
July 26	9	Memorandum (Motz, J.) dated 7/26/88, that preliminary injunction was entered in favor of Plaintiff and that this injunction is stayed pending Defendants' appeal to the Fourth Circuit, as therein more particularly set forth. (c/m by chambers) (EOD 7/26/88 gez)
July 26	10	Notice of Appeal of Defendants. (d/s and topf furnished 7-26-88 bmh) (NOA mailed 7-26-88 bmh)
July 26	—	Record on Appeal transmitted to Judge Russell (4CCA—Spartansburg, S. C.) at the request of Judge J. Frederick Motz. (File—Vol. I sent Express Mail)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civ. No. HAR 88-1994

TIMOTHY A. BROWN,
Plaintiff,

v.

ROBERT J. LOWEN, F. ELWOOD KYSER, and INTERNATIONAL ORGANIZATION OF MASTERS, MATES, AND PILOTS,
Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under section 401(c) of the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA"), 29 U.S.C. § 481(c), in which a member of the International Organization of Masters, Mates and Pilots (IOMMP") who is running for union office against the incumbent President seeks to enforce his statutory right to have his union mail, at the member's own expense, a statement in support of his candidacy. The union has refused to send out his mailing until after the union's convention, at which time plaintiff must already have been nominated and the ballots will be about to be mailed to the union membership. Because plaintiff desires to begin the debate about his candidacy before the convention begins, he seeks a Court order directing defendants to allow him to do the mailing immediately.

2. The Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1337, and 29 U.S.C. 481(c).

Parties

3. Plaintiff Timothy A. Brown is a member of defendant IOMMP.

4. Defendants Robert J. Lowen and F. Elwood Kyser are the International President (and chief executive officer), and the International Secretary-Treasurer, respecttively, of the IOMMP, and have their principle place of business in Linthicum Heights, Maryland. The International Organization of Masters, Mates and Pilots is a labor organization whose principal office is loctaed in Linthicum Heights, Maryland. The IOMMP is governed by a General Executive Board ("GEB"), which consists of the President, Secretary-Treasurer, Executive Vice-President, and several Vice-Presidents.

Facts

5. The IOMMP's membership consists of approximately 8000 individuals who work as ship's officers and pilots and in similar positions. Almost all members spend their working lives on board ship, and are often away from home for long periods of time.

6. Plaintiff Brown has announced his candidacy for International President of IOMMP, in opposition to defendant Lowen. That election will take place during the regular election of IOMMP officers which is scheduled to be held in 1988.

7. Under the IOMMP Constitution, in order to be nominated to run in the 1988 election, Brown must either have his name placed in nomination by a delegate to the IOMMP Convention, which is scheduled to begin on August 22, 1988, or must obtain signatures of at least fifty members on a nominating petition, which must be received by the International Secretary-Treasurer before the time the Chairman of the Convention declares nominations to be closed.

8. Plaintiff Brown wants to encourage the membership to begin consideration of his candidacy and of the

issues he hopes to raise during his campaign before the deadline for making nominations, both in orde. to persuade the membership that he should be nominated and elected, and to attract support from individuals who might otherwise be inclined to run for office themselves or to encourage other members to do so.

9. Accordingly, on May 9, 1988, Brown notified defendant Kyser of his intent to run for office, and requested permission to send a mailing to the union membership in support of his candidacy. Toward that end, he asked Kyster to deliver the union's mailing list to a mailing service and to provide him with information about the cost of the mailing.

10. On June 2, 1988, Brown had not yet received a response to this request. Accordingly, by letter of that date, he forwarded his request to defendant Lowen, with a copy of his previous letter to Kyser, and indicated that he wished to be able to do a mailing by July 5, 1988. On June 7, 1988, defendant Kyster replied that no mailings would be possible until after the completion of the Convention and the selection of an "Impartial Balloting Agency."

11. By letter dated June 15, 1988, Brown appealed to the GEB from Kyser's refusal to allow a mailing before the convention and reiterated his desire to have his first mailing done by July 5, 1988. In addition, Brown specified that the mailing service selected by the union should be provided with Cheshire labels, which can be affixed by machine and therefore minimize the expense of the mailing. Although the IOMMP is capable of producing its mailing list in this fashion, the GEB denied Brown's request on July 6, 1988.

12. Because of the nature of the work of the members of the IOMMP, communications through the mailing list and through the union newspaper, which is controlled entirely by the incumbers, are the only effective means by

which plaintiff Brown can persuade his fellow members that he ought to be nominated and elected as the International President of the IOMMP.

13. By refusing to comply with their statutory duty to provide plaintiff Brown with the requested mailing labels so that he can convey his views to the membership of the IOMMP, defendants are causing plaintiff irreparable injury, and will not cease doing so unless they are enjoined by this Court.

Cause of Action

14. By refusing plaintiff's reasonable request that he be permitted to do a mailing to the union membership at the time of his choosing, defendants have violated section 401(c) of the LMRDA, 29 U.S.C. § 481(c).

WHEREFORE, PLAINTIFF PRAYS THE COURT TO ENTER JUDGMENT AND ORDER:

A. Declaring that defendants have violated section 401(c) of the LMRDA, 29 U.S.C. § 481(c);

B. Preliminarily and permanently enjoining defendants to furnish its mailing list, printed on Cheshire labels, to a mailing service selected by plaintiff Brown, so long as Brown pays for the cost of producing the labels;

C. Awarding plaintiff and his counsel their reasonable costs and attorney fees; and

D. Awarding such other relief as may be just and proper.

Respectfully submitted,

/s/ Paul Alan Levy
PAUL ALAN LEVY
(D.C. Bar 946400)

/s/ Arthur L. Fox II
ARTHUR L. FOX II
(Trial Bar 01532)

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July 11, 1988

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civ. No. ——

TIMOTHY A. BROWN,
Plaintiff,

v.

ROBERT J. LOWEN, F. ELWOOD KYSER, and INTERNATIONAL ORGANIZATION OF MASTERS, MATES, AND PILOTS,
Defendants.

AFFIDAVIT OF TIMOTHY A. BROWN

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1. My name is Timothy A. Brown. I am a member of the International Organization of Masters, Mates and Pilots ("IOMMP"), and this affidavit is submitted in support of my attempt to obtain relief in this case.

2. Defendants Robert J. Lowen and F. Elwood Kyser are the International President and chief executive officer, and the International Secretary-Treasurer, respectively, of the IOMMP, and have their principal place of business in Linthicum Heights, Maryland. The International Organization of Masters, Mates and Pilots is a labor organization whose principal office is located in Linthicum Heights, Maryland. The IOMMP is governed by a General Executive Board ("GEB"), which consists of the President, Secretary-Treasurer, Executive Vice President, and several Vice-Presidents.

3. The IOMMP's membership consists of approximately 8000 individuals who work as ship's officers and pilots and in similar positions. Almost all members spend their working lives on board ship, and are often away from home for long periods of time.

4. I have announced my candidacy for International President of IOMMP, in opposition to defendant Lowen. That election will be held during the regular election of IOMMP officers which is scheduled to begin in the late summer of 1988. As of this date, I meet the eligibility requirements for this position.

5. Under the IOMMP Constitution, a copy of which is attached as Exhibit A, in order to be nominated to run in the 1988 election, I must either have my name placed in nomination by a delegate to the IOMMP Convention which is scheduled to be held on August 22-24, 1988, or must obtain signatures of at least fifty members on a nominating petition which must be received by the International Secretary-Treasurer before the time the Chairman of the Convention declares nominations to be closed. Under the Constitution, the ballots may be mailed out as soon as ten days after the end of the Convention, and they must be mailed out within thirty days of that time; normally the ballots have been mailed closer to ten than to thirty days after the Convention.

6. Because of the fact that the members of the IOMMP are generally at sea, communications through the mailing list and through the union newspaper are the only effective means by which I can persuade my fellow members that I ought to be nominated and elected as the International President of the IOMMP.

7. The officers of the IOMMP control the union's newspaper, which is the principal and only regular source of news which members have about union affairs. Although theoretically the Constitution requires that the newspaper be open to all points of view, as a practical matter the "editorial board"—*i.e.*, the union officers—

screen out any membership contributions that are deemed "political." This screening process does not stop them, however, from using the newspaper to promote their own views of the problems facing the union.

8. Because members are subject to this steady barrage of information favoring the policies espoused by the incumbents, it is not enough for me to be able to do a single mailing to the membership at the time the ballots are mailed out. Instead, I wish to be able to start discussing the issues that I deem important now, before nominations and before the convention, so that by the time the ballots arrive the membership will have more information on my side of the story on which to base a decision.

9. I want to encourage the membership to begin consideration of my candidacy and of the issues I hope to raise during his campaign before the deadline for making nominations, both in order to persuade the membership that I could be nominated and elected, and to attract support from individuals who might otherwise be inclined to run for office themselves or to encourage other members to do so.

10. Because so many members spend long periods of time away from home, and thus may not see the mail which has been sent to them for quite some time after it reaches their homes, a lengthy period is allowed by the IOMMP Constitution for the return of the ballots following the date on which they are first mailed to the membership. This lengthy period for balloting does not lessen my need to communicate my campaign messages now, however. I vote my ballots immediately after seeing them, and I understand and believe that other members do likewise. I am therefore concerned that, by the time they see the ballots, many members will already have made up their minds for whom to vote. I want to be sure that the members have already learned about my views, and perhaps been spurred to discuss them with other members in the course of their work, before they see their ballots.

11. Accordingly, on May 9, 1988, I notified defendant Kyser of my intent to run for office, and requested permission to send a mailing to the union membership in support of my candidacy. Toward that end, I asked Kyser to deliver the union's mailing list to a mailing service and to provide me with information about the cost of the mailing. A copy of this letter is attached as Exhibit B.

12. On June 2, 1988, I had not yet received a response to this request. Accordingly, by letter of that date, a copy of which is attached as Exhibit C, I forwarded my request to defendant Lowen, with a copy of my previous letter to Kyser, and indicated that I wished to be able to do a mailing by July 4, 1988. On June 7, 1988, defendant Kyser replied that no mailings would be allowed until after the completion of the Convention and the selection of an "Impartial Balloting Agency." A copy of Kyser's reply is attached as Exhibit D.

13. On June 15, 1988, a copy of which letter is attached as Exhibit E, I appealed to the GEB from Kyser's refusal to allow a mailing before the convention and reiterated my desire to have my first mailing done by July 5, 1988. In addition, I specified that the mailing service selected by the union should be provided with Cheshire labels, which can be affixed by machine and therefore minimize the expense of the mailing. It is my understanding that on July 6, 1988, the GEB denied this request, although I have not yet received formal notification of that decision.

14. By refusing to comply with their statutory duty to assist me in communicating his views to the membership by use of the mailing list, defendants are causing me irreparable injury.

Pursuant to 28 U.S.C. § 1746, I hereby certify that the foregoing is true and correct. Executed on July 8th, 1988.

/s/ Timothy A. Brown
TIMOTHY A. BROWN

Excerpts from BROWN *v.* LOWEN
BROWN AFFIDAVIT, EXHIBIT A

CONSTITUTION

of the

International Organization

of

Masters, Mates & Pilots

[SEAL]

This Constitution has been voted for by more than the necessary two-thirds majority pro rata vote of the Delegates to the 64th Convention (Constitutional) of the International Organization of Masters, Mates & Pilots. It has been approved for submission to the membership for ratification by referendum by the Labor Management Services Administration of the United States Department of Labor, and the Honorable Judge Constance Baker Motley of the United States Federal District Court, Southern District of New York.

* * * *

Article IV

CONVENTIONS

Section 1. *Authority and Power of Conventions*

The authority and power of this Organization is vested in the members thereof acting by and through their duly elected delegates meeting in Convention assembled.

Such Convention is the source of all true and legitimate authority over the Organization and possesses as such supreme and absolute power over same and all channels leading thereto. It shall, while in session, have the sole and exclusive power to grant charters to affiliate bodies; to suspend or revoke for cause any charter so granted; to hear and determine all appeals and to enact laws and establish regulations to settle grievances from the membership groups or members theretof in order to carry out in the most effective manner the objectives and purposes of this Organization. The Convention does not have the power to alter or amend the Constitution except as provided in Article X hereof.

The Convention may be regular, special or constitutional and is to be so dominated in the Convention Call.

Section 2. *Place, Date and Notice*

A regular Convention is to be held at a place and date to be decided upon by the Convention in session. For the first three (3) years after ratification of this Constitution, the Convention shall be held annually. Thereafter it shall be held biennially. Special and Constitutional Convensions shall be called and held as provided in Sections 7 and 8 of this Article. Two-thirds of the registered delegates, including the elected officers of the Organization, shall constitute a quorum. The International Secretary-Treasurer shall, not less than four (4) month prior to the date of the Convention, send out to all known delegates and to all offices of the Organization the

convention call notifying them of time and place of Convention. However, in case of emergency, by a majortiy vote of the General Executive Board, the site and/or date of the Convention may be changed to a place and time more appropriate for all concerned.

Section 3. *Representation*

a) Each membership group shall be eligible to have representation in the Convention.

b) Subject to the provisions of subsection 4(a) of this Article, each membership group shall be entitled to membership representation based on the average membership in good standing for the four (4) quarters immediately preceding the Convention, but in no event shall this membership representation exceed the true mean membership of the membership group for the immediate preceding four (4) quarters.

c) Each membership group shall be entitled to a maximum number of delegates in accordance with the following table. This maximum number includes those delegates elected by virtue of their election to office:

Members	*Delegates*
up to 100	1
101 to 300	2
301 to 500	3
501 to 1000	5
1001 to 3000	7
3001 and over	25

d) Each delegate shall vote an equal percentage of the membership group he represents provided that all fractional votes be eliminated.

Section 4. *Election and Credentials of Delegates*

a) The International President, the International Executive Vice President, the International Secretary-Treasurer and the Vice Presidents shall be delegates to all Conventions, together with the most recently elected Convention delegates from each membership group.

The International President, the International Executive Vice President, the International Secretary-Treasurer and the Vice Presidents then in office by virtue of their election to such offices shall be delegates with full voice and vote.

The pro rata votes of the International President, the International Executive Vice-President and the International Secretary-Treasurer shall be calculated as follows:

i) The entire voting strength of the Convention shall be calculated as described in Section 3(b) and 3(c) above.

ii) The total number of registered delegates shall be calculated in accordance with Section 3(d) above, which number shall be increased by three.

iii) The voting strength, (from (i) above), divided by the augmented number of delegates, (from (ii) above), shall determine the pro rata vote that the International President, the International Executive Vice President and the International Secretary-Treasurer shall each cast at the Convention.

iv) The combined voting strength of the three Officers described above shall reduce, on a percentage pro rata basis, the total voting strength for each membership group.

No person shall be recognized as a delegate or alternate delegate, who is not a member in good standing. Further, each delegate and alternate delegate must be chosen by a scret postal referendum ballot in an election in which all members in good standing were eligible to participate unless that person is a delegate as provided for by this Constitution.

b) The International Secretary-Treasurer shall issue the authorized number of credentials for the delegates of each membership group which shall be properly attested to by the appropriate membership group vice president. A duplicate of said credential shall be returned to the Organization by said officer at least two (2) weeks prior to the Convention.

If an alternate presents credentials and is seated in place of the delegate-elect, he shall be the recognized representative through the remaining sessions of the Convention.

If any member of the Organization had reason to challenge the credentials of any delegate on the ground that the delegate has not been elected in accordance with this Constitution, or any other ground, the complaint is to be made to the Credentials Committee which shall investigate and report to the Convention. The Convention shall determine whether or not to seat the delegate. Failure to challenge the delegate in this manner constitutes a waiver of all objections.

c) The International Secretary-Treasurer shall pay reasonable expenses incident to the meetings of any Convention and the reasonable expenses of the International Officers and staff members, and the membership group delegates.

d) In addition to the reasonable expenses referred to in subsection(c) above, the International Secretary-Treasurer shall pay a per diem allowance to all elected "rank-an-file" delegates from the individual membership groups. This per diem shall be equal to the daily wage of an Assistant Port Agent of the Offshore Membership Group; provided however that per diem paid shall not be less than the per diem customarily paid by a former subordinate body.

Section 5. *Committees*

a) The International Subcommittee shall, at least five (5) days prior to each Convention, appoint from the delegates-elect, a committee of not less than three (3) delegates to act as a Committee on Credentials. This Committee shall have its report in writing ready for the Convention when it opens.

b) The International Subcommittee shall, at least five (5) days prior to each Regular or Special Convention, appoint the following Committees, to serve for that session only, to wit:

1) Rules
2) Constitution
3) Resolutions and Petitions
4) Laws and Legislation
5) Grievances and Appeals
6) Finance
7) General Executive Actions

It shall be the duty of the Committee on Finance to report to each Regular and Special Convention on the International Secretary-Treasurer's report, making recommendations should they deem it necessary.

Section 6. *General Conduct of Convention*

a) The order of business at a Regular or Special Convention shall be as follows:

1) Call to Order
2) Report on Credentials*

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* The Chairman of the Credentials Committee shall consult with the Chairman of the Finance Committee before making his report.

3) Report on Rules

4) Reports of International Officers

5) Report on General Executive Board Action

6) Report of Committees

7) Unfinished Business

8) New Business

9) Nomination of Officers

10) Adjournment

Except as otherwise provided by this Constitution or rules adopted by the Convention, all meetings shall be governed by Roberts Rules of Order.

b) All proposed resolutions shall be forwarded to the International Secretary-Treasurer at least thirty (30) days prior to the opening day of the Convention.

c) The order of business may be changed or suspended and new resolutions may be considered by a Convention only by a two-thirds' majority pro rata vote.

d) Members in good standing shall be authorized observers at any session of a Convention. Such members may also attend committee meetings.

Non-members specifically invited by the International President and/or by the majority pro rata vote of the Convention shall be authorized observers at any plenary session of the Convention. Such non-members may attend committee meetings only with the approval of the committee by majority vote.

Any observers who interfere with the business of the Convention or any Committee, or who violate rules established by the Rules Committee and approved by the Convention delegates shall be denied further attendance.

Section 7. *Special Conventions*

A Special Convention may be called by a two-thirds' majority vote of the General Executive Board. Special Conventions may also be called for by a petition to the International President, signed by a majority of the Board members. The time and place is to be set by the party or parties calling such Special Convention. At least thirty (30) days' written notice shall be given to the known delegates and to all offices of the Organization prior to the date of convening a Special Convention.

Section 8. *Constitutional Conventions*

a) A Constitutional Convention may be called by a two-thirds' majority vote of the General Executive Board or by a two-thirds' majority pro rata vote of a Regular Convention.

b) The time, place and written notice shall be designated by the person or body calling the Constitutional Convention.

c) Such Convention shall be limited to Constitutional matters.

d) The International Subcommittee shall, at least five (5) days prior to the Constitutional Convention, appoint a Rules Committee and a Steering and Drafting Committee unless such shall have been appointed or elected by the Convention or the General Executive Board at the time of calling the Convention.

e) The normal order of business for Conventions shall be suspended at Constitutional Conventions following the "Report on Rules" and the remainder of the Convention till adjournment shall be devoted to the report of the Steering and Drafting Committee, matters appertaining thereto and consideration and action thereon.

Section 9. *Record and Publications of Actions*

The credentials of delegates, resolutions introduced and other records of each Convention shall be preserved until the next Regular Convention. Minutes of each Convention, and other documents or records required by law, shall be permanently maintained by the International Secretary-Treasurer.

Within ninety (90) days of the conclusion of a Convention, the affirmative actions shall be prepared and distributed to all members, noting the action taken by the Convention.

Section 10. *Verbatim Record*

A verbatim record shall be kept at all Conventions and copies shall be forwarded to all delegates and all ports in which the Organization maintains an office, as soon as possible after the close of a Convention.

Section 11. *Proxy Votes*

There shall be no proxy votes at any Convention.

Article V

INTERNATIONAL OFFICERS GENERAL EXECUTIVE BOARD AND REPRESENTATIVES

ELECTION PROCEDURES

Section 1. *Notice of Elections*

Not less than fifteen (15) days prior to any election, the International Secretary-Treasurer shall give appropriate notice to the membership of the forthcoming election.

Section 2. *International Officers and Membership of General Executive Board*

The Officers of this Organization shall consist of an International President, an International Executive Vice

President, and International Secretary-Treasurer and Vice President as follows:

(1) Vice President—Atlantic Ports

(2) Vice President—Gulf Ports

(3) Vice President—Pacific Ports

(4) Vice President—Pilotage

(5) Vice President—Atlantic and Gulf Marine Region

(6) Vice President—Pacific Maritime Region

These officers and additional Vice President, if any, as hereafter provided, shall collectively constitute the General Executive Board of the Organization.

Additional Vice Presidents may be elected for any membership group provided in Article III, Section 1(h) which is not currently and specifically represented on the General Executive Board at the general election following the date when membership of such group reaches at least 500 members, or for any affiliated body in accordance with the Affiliation Agreement.

Section 3. *Election of Officers and Terms of Office*

a) The International President, the International Executive Vice President, and the International Secretary-Treasurer shall be elected by a plurality vote of the general membership of the Organization, provided the winning candidate receives at least forty percent (40%) of the valid ballots counted. All other elections provided for in this Constitution shall be by plurality vote.

If a run-off election is necessary it shall be between the two candidates receiving the highest vote. If one of the two candidates in a run-off election declines to run, the other candidate shall be deemed elected for said International Office. The International Ballot Committee, the Impartial Balloting Agency, and the balloting procedures

shall be the same as in the original election. The original list of eligible voters, with deletion of members who are no longer in good standing shall be used for the mailing of ballots. No other proposition may be placed on the ballot and the balloting shall commence forthwith but in no event later than thirty (30) days following the certification of the results of the election.

b) The Vice President—Atlantic Ports, Vice President —Gulf Ports and Vice President—Pacific Ports shall be elected by the members of the Organization classified as "Offshore Membership".

c) The Vice President—Pilotage shall be elected by the members of the Organization classified as "Pilot Membership".

d) The Vice President—Atlantic and Gulf Maritime Region (formerly Regional Director) shall be elected by the membership of the Atlantic and Gulf Maritime Region.

e) The Vice President—Pacific Martime Region (formerly Regional Director) shall be elected by the membership of the Pacific Maritime Region.

f) Voting shall be by secret ballot and conducted by an impartial balloting agency selected by a majority pro rata vote of the International Convention, except that for the 1977 elections for the Officers in (d) and (e) above, the election procedures previously used by these groups shall govern.

g) Unless legally removed, and conditioned upon their being and remaining in good standing in the Organization, all elected International Officers shall hold their respective offices for a term of three (3) years, or until their successors are duly elected and installed.

Section 4. *Eligibility for Nomination and Election as an International Officer*

Any member meeting the requirements of this section shall be eligible for nomination to and election as an

International Officer of the Organization as listed in Article V, Section 2.

a) To insure that the leadership of the Organization continues to be drawn from the ranks of its supervisory and professional membership with broad and current experience in the maritime industry, the following qualifications shall be necessary for nomination and election. The member shall:

(1) Have been a member of the Organization for a period of at least four (4) years and is and has been continuously in good standing for the twenty-four (24) months preceding nomination.

(2) Additionally, the International President, International Executive Vice President, and International Secretary-Treasurer must meet the requirements as hereafter listed for election as Vice President for one of the membership groups of the Organization.

b) The Vice President—Atlantic Ports, Vice President —Gulf Ports and Vice President—Pacific Ports in addition to the requirements of Section 4(a)(1) above must:

(1) have had his membership classified as Offshore Membership for the twenty-four (24) months preceding nomination.

(2) for all elections subsequent to January 1, 1980, within such twenty-four (24) month period of (b)(1) immediately above

(i) have served 180 days under the authority of his license aboard vessels for which the Organization is the recognized bargaining agent; or

(ii) have served the Organization during such twenty-four (24) month period for 180 days of actual service as an officer or as a paid or unpaid official, representative, delegate or committeeman; or

(iii) any combination of the above.

c) The Vice President—Pilotage, in addition to the requirements of Section 4(a)(1) and (2) above must:

(1) have had his membership classified as Pilot membership for the twenty-four (24) months preceding nomination,

(2) for all elections subsequent to January 1, 1980, within the twenty-four (24) month period of (c)(1) immediately above

(i) have served 180 days in the capacity of a "Pilot" as described in the Pilot Membership Group of Article III, Section 4(h)(2) of this Constitution; or

(ii) have served the Organization during such twenty-four (24) month period for 180 days of actual service as an officer or as a paid or unpaid official, representative, delegate or committeeman; or

(iii) any combination of the above.

d) The Vice President—Atlantic and Gulf Maritime Region and the Vice President—Pacific Martitime Region, in addition to the requirements of Section 4(a)(1) and (2) above, must possess a valid license as an officer of vessels of the United States and

(1) have been a member of his respective membership group for the twenty-four (24) months preceding nomination,

(2) for all elections subsequent to January 1, 1980, within such twenty-four (24) month period of (d), (1) immediately above

(i) have served 180 days under the authority of his license aboard vessels for which the Organization is the recognized bargaining agent; or

(ii) have served the Organization during such twenty-four (24) month period for 180 days of actual service as an officer or as a paid or unpaid official, representative, delegate or committeeman; or

(iii) any combination of the above;

e) At the time of initial election of any Vice President for the membership groups not specifically represented on the General Executive Board as of the date of adoption of this Constitution, any member whose membership is in such group shall be eligible for nomination to and election as such Vice President, provided that at the time of nomination he has been a member of the Organization for a period of two or more years with membership in the applicable membership group for one year immediately preceding nomination and is and has been in continuous good standing for the 12 months preceding nomination. For all elections subsequent to the initial election the periods of membership and good standing for eligibility and election shall conform to the requirements of Section 4(a)(1) and (2) above and there shall be such additional requirements as the General Executive Board shall provide.

f) The continuous good standing requirements of paragraphs 4(a) through (e) inclusive above, shall not be applicable to nominations and elections before January 1, 1980.

g) No candidate for an elective, paid position for a membership group shall accept nomination to or be a candidate for Vice President of such membership group or for International President, International Executive Vice President or International Secretary-Treasurer. No member can accept nomination to or be a candidate for more than one office described in Article V, Section 2.

Section 5. *Nominations for International Officers*

Nominations for the offices of International President, International Executive Vice President, International Secretary-Treasurer and all Vice Presidents shall be made at the Regular Convention preceding the election, subject to the provisions of Section 3(f) of this article.

When a nomination is made in Convention for these offices, the mover of the nomination must at such time present a statement setting forth the nominee's name, last known address, qualifications, background and general experience. The same information required of a member nominated in Convention shall be furnished along with any nomination by petition.

Nominations may also be made by petition signed by not less than fifty (50) members of the Organization, provided that with respect to nominations for Vice President, the petition must be signed by five (5) members of the applicable membership group. Verification of the good standing of the petitioners shall be made under the supervision of the International Secretary-Treasurer. All such nominations by petition must be received by the International Secretary-Treasurer prior to the time the Chairman declares nominations closed for International Officers.

No later than ten (10) days after the close of nominations, each candidate shall have the right to submit a statement of fact not to exceed two hundred (200) words which shall include such information as:

a) Date of joining Organization;

b) Subordinate bodies he has belonged to and membership Group, if any;

c) License, date and issue number, if any.

This statement by a candidate shall appear on the ballot. If a statement is not furnished as required in this section, no statement shall appear with the candidate's name on the ballot.

Notification to Nominees

The nominees for the office of International President, International Executive Vice President and International Secretary-Treasurer and Vice Presidents shall be notified by the International Secretary-Treasurer by telegram or

cable of their nomination.* Such telegram or cable shall advise the candidates of the following:

a) the ten-day acceptance rule.

b) that his written acceptance must state that he is not disqualified as a candidate by the Labor-Management Reporting and Disclosure Act of 1959.

c) of his right to submit a statement of fact for inclusion on the ballot, not to exceed 200 words which shall include such information as required in a), b), and c) of this Section 5.

Acceptance of Nomination

Only those candidates who shall have notified the International Secretary-Treasurer, in writing, within ten (10) days after the close of the nominating period that they will accept the nomination shall have their names placed on the International ballot.

Every candidate for any office in the Organization shall certify in writing that he is not prevented from holding office by any provision of the Labor-Management Reporting and Disclosure Act of 1959 or by any provision of the International Constitution. Such certification shall accompany every candidate's acceptance of his nomination for office.

Section 6. *Representatives*

To enable the Organization to be responsive to and meet its changing needs and that of its active and retired membership it shall open, close and operate offices or other facilities at various Ports, Regions or otherwise to meet specialized membership needs. Such offices or other facilities shall be staffed by representativs who may be called

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* (For the purposes of this Section, telegrams or cables shall be considered communications in writing.)

Port Agents, Assistant Port Agents, Pilot Regional Representatvies, Branch Agents, and such other titles as set forth in the work rules of the membership groups, or such other title as may be established by the General Executive Board, together with such clerical and other assistants as may be authorized from time to time. The Offices and facilities of Ports shall be operated on the basis of requirements of service to the active and retired membership. The ports listed in subparagraph (a) (1) below shall remain open for service to that membership for a minimum period of three years following the adoption of this Constitution. Effective January 1, 1978, the Vice President—Atlantic Ports, Vice President—Gulf Ports and Vice President—Pacific Ports, by virtue of their election to such office, during their incumbency and in addition to their other duties and responsibilities as provided by this Constitution, shall serve without additional compensation as the Port Agents for New York, New Orleans and San Francisco, respectively. In addition, and to assist the International Officers in carrying out their functions, other Port Agents, Assistant Port Agents and Pilot Regional Representatives and other Representatives shall be nominated and elected as set forth herein:

a) *Port Representatives*

(1) Effective January 1, 1978, the following Ports shall have the Port Agents and Assistant Port Agents as shown for each:

New England	1 Assistant Port Agent
New York	1 Vice-President/Port Agent
	4 Assistant Port Agents
Philadelphia	1 Assistant Port Agent
Baltimore	1 Port Agent
Norfolk	1 Port Agent
	1 Assistant Port Agent
Charleston, S.C.	1 Assistant Port Agent

Jacksonville	1 Port Agent
Mobile	1 Port Agent
New Orleans	1 Vice President/Port Agent
	2 Assistant Port Agents
Houston	1 Port Agent
	1 Assistant Port Agent
Galveston	1 Port Agent
Los Angeles/ Long Beach	1 Port Agent
	1 Assistant Port Agent
San Francisco	1 Vice President/Port Agent
	3 Assistant Port Agents
Portland	1 Assistant Port Agent
Seattle	1 Port Agent

(2) Any member meeting the qualifications for election as Vice President—Atlantic Ports, Vice President—Gulf Ports, and Vice President—Pacific Ports, shall be eligible for nomination and election as a Port Agent or Assistant Port Agent in the same manner and at the same time as International Officers are nominated and elected except that only three signatures shall be required for a nominating petition. Unless legally removed, each such Port Agent or Assistant Port Agent shall serve for a period of three years or until his successor is duly elected and installed.

b) *Pilots Regional Representatives*

1) There shall be Pilot Regional Representatives for the Atlantic Coast, Gulf Coast and Pacific Coast, respectively. Further, such other geographic regions as established by the General Executive Board which may subsequently reach a membership of 100 or more shall be entitled to a Regional Representative. Such Regional Represensative shall be appointed by the General Excutive Board from, and on the recommendation of, the newly

established region membership, to serve until the next regular election.

2) Any member meeting the qualifications as Vice President—Pilotage shall be eligible for nomination and election as Pilot Regional Representative in the same manner and at the same time as International Officers are nominated and elected, except that only three signatures shall be required for a nominating petition. Unless legally removed, each such Pilot Regional Representative shall serve for a period of three years or until his successor is duly elected and installed.

c) *Atlantic and Gulf Maritime Region*

(1) The elected positions for the Atlantic and Gulf Maritime Region (the former Atlantic and Gulf Region of the Inland Division), in addition to the Vice President, as set forth in Article V Section 2, shall be those as set forth in its work rules as of the date of the adoption of this Constitution, except that the titles and functions of such elected representatives shall not apply or be implemented in a manner in conflict with the new restructuring of the Organization contained in this Constitution.

(2) The qualifications for such elected positions and the elective procedures set forth in the work rules shall govern the election of such officers for the 1977 election. The elective procedures thereafter shall be the same as for all other membership groups and qualifications shall be the same as provided in Section 4(d) above.

d) *Pacific Maritime Region*

(1) The elected positions for the Pacific Maritime Region, in addition to the Vice President, as set forth in Article V Section 2, shall be those as set forth in the work rules of the Pacific Maritime Region as of the date of the adoption of this Constitution, (the former West Coast and Pacific Region of the Inland Division),

except that the titles and functions of such elected representatives shall not apply or be implemented in a manner in conflict with the new restructuring of the Organization contained in this Constitution.

(2) The qualifications for such elected positions and the elective procedures set forth in the work rules shall govern the election of such officers for the 1977. The elective procedures thereafter shall be the same as for all other membership groups and qualifications shall be the same as provided in Section 4(d) above.

e) *Other Regional Representatives*

Regional Representatives for other membership groups may be established in such numbers and for such areas as the General Executive Board shall determine initially. They may be elected at the next regular election following such time as the total membership in any such membership Group reaches 500 or more. Further elections to such positions after the first one shall be established by amendment to this Constitution. Eligibility requirements and nomination and election procedures for such additional membership Group representatives shall be similar to those set forth in this section or as specified by the General Executive Board.

(f) *Field Representatives*

In addition to the Representatives listed above, the General Executive Board may from time to time, appoint such Field Representatives as it deems necessary to serve as Organization Representatives for such areas on such conditions and for such remuneration as it shall determine.

g) *Vacancies*

In the event of any vacancy in the position of any elected or appointed Representative through death, resignation or otherwise, the General Executive Board may

for the period extending to the next election fill that vacancy by appointing a new Representative, request that another Representative fill the vacancy, transfer the functions of the vacant position to another Representative, or if it so chooses leave the vacancy unfilled.

Section 7. *Election of International Ballot Committee*

An International Ballot Committee shall supervise the election and certify that the election was conducted in accordance with the International Constitution.

The Committee shall consist of five (5) members and a first, second, third, fourth and fifth Alternate, nominated and elected by the Convention who are not candidates for office in the election to be supervised.

The Committee shall elect its own Chairman.

Section 8. *List of Eligible Voters*

a) Prior to the close of the nominating period, the International Secretary-Treasurer shall cause to be prepared in duplicate a listing of the active members of each membership group who have not been suspended for non-payment of dues, which listing shall include the social security number and last known address of each such member as recorded on the Organization records, shall be dated and certified to by the International Secretary-Treasurer who shall furnish a copy of such listings to the Impartial Balloting Agency.

b) Each member whose name appears on the above list shall be mailed a ballot.

c) If for any reason any active member does not receive his ballot he may request, in writing, a ballot from the Impartial Balloting Agency. Such request shall include a statement that he has neither received nor voted any ballot in this election. The Impartial Balloting Agency shall issue a ballot to such member found entitled

thereto. If a duplicate ballot is issued it will be clearly marked "DUPLICATE."

Section 9. *Balloting Procedure*

a) (1) The Impartial Balloting Agency shall send out sufficient sample official ballots for the membership groups of the Organization and each such ballot shall bear the names of only the candidates who have been nominated and who shall have notified the International Secretary-Treasurer of their acceptance of such nomination that the respective membership group is entitled to vote upon. The form of the official ballot shall be stamped across the body of the ballot "SAMPLE." Sample ballots shall not be defaced.

(2) The ballots for each membership group shall contain only the names of the candidates in elections in which the members of such group may vote as provided in Section 3 of this Article.

b) The ballot shall be enclosed in an envelope which shall have only the following printed thereon: SECRET BALLOT.

The SECRET BALLOT envelope shall be enclosed in an outer envelope which shall have the following information completed by the member in the upper left hand corner: his printed name and address, his membership group, social security number, and his signature. This envelope shall be prestamped and self-addressed to the Depository designated by the Impartial Balloting Agency to be kept for tabulation and certification purposes.

c) The Impartial Balloting Agency shall be responsible for making all arrangements for such Depository and for the placing therein of the locked and sealed ballot box of the Organization. All such arrangements shall be subject to the approval of the International Ballot Committee. The Impartial Balloting Agency shall retain in its possession the keys to the locked and sealed ballot box

until the election results have been certified by the Impartial Balloting Agency.

d) Immediately following the tenth day after the close of the nominating period, the Impartial Balloting Agency under the supervision of the International Ballot Committee shall prepare the official ballot and shall mail one such ballot to each member of the Organization who has not been suspended for non-payment of dues at the time the ballots are mailed out. All ballots shall be mailed not later than the thirtieth day following the close of the nominating period at which nominations have been made.

e) In any case where a member has listed an office of the Organization or care of an official of the Organization as his last known address, the Impartial Balloting Agency shall mail a notice to such member at that address informing such member of the means by which he can obtain his ballot. The Impartial Balloting Agency shall not send any ballot to an office of the Organization nor in care of an official thereof except the official's own ballot to his own home.

f) The International Ballot shall be officially closed ninety (90) days after the date of mailing of the ballots by the Impartial Balloting Agency. All ballots received later than that date shall be declared void. In the case of those members receiving duplicate ballots, the ballot counted shall be the ballot bearing the earliest date stamp of the Impartial Balloting Agency.

g) The members of the official International Ballot Committee and the Impartial Balloting Agency shall be empowered with an order executed by the Organization and signed by the International President and International Secretary-Treasurer and under the seal of the Organization to proceed within seven (7) days following the close of the balloting to the Depository where the locked and sealed ballot box is kept. Upon presenting the duly executed order to the custodian of the Depository

said custodian shall deliver the ballot box which shall contain all ballots which have been cast.

h) The Impartial Balloting Agency shall proceed then to counting the ballots. Candidates receiving a plurality vote of the general membership for each office, except as provided in Section 3 (a) above, shall be declared elected and a certification of the results shall be made by the Impartial Balloting Agency. Telegrams or other communications shall be sent to all ports of the Organization containing the results of said elections.

i) Challenges to the election may be made to the International Ballot Committee at the time of the counting of the ballot by the candidate or his representative observer who shall possess certification of same from the candidate he represents. Appeals from rulings of the Ballot Committee shall be taken to the General Executive Board and then to the Convention. Challenges to the election may also be made to the General Executive Board, in writing, within thirty (30) days from the date of completion of the counting of the ballot. An appeal from the ruling of the General Executive Board may be taken to the Convention.

j) The ballots and all records pertaining to the election must be preserved for one year.

Section 10. *Miscellaneous Election Matters*

a) Any candidate desiring to distribute literature in connection with his candidacy, as provided under Section 401 (c) of the Labor-Management Reporting and Disclosure Act of 1959, shall be required to pay in advance for the cost of such distribution. The amount shall be certified by the independent mailing service as designated by the Impartial Balloting Agency. The Impartial Balloting Agency shall make appropriate arrangements for the security of the mailing list. The Impartial Balloting Agency shall immediately notify the candidates of the

name of the mailing service and the cost of distribution of the candidate's literature.

b) Installation of officers shall take place not later than thirty (30) days after the certified results of the ballot are known, at the convenience of the successful candidate.

* * * *

Article X

AMENDMENT OF CONSTITUTION

Section 3. *State and Federal Law; Separability Clause*

Any provision within this Constitution that is in direct conflict with any State or Federal Law shall not be enforced by the elected Officers of the Organization. The General Executive Board shall have authority between Conventions to amend this Constitution as necessary to remove any conflict between its provisions and those of any applicable Federal or State Law.

If any provision of this Constitution, or the application of such provision to any person or circumstance, shall be held invalid, and remainder of this Constitution, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

BROWN AFFIDAVIT, EXHIBIT B

09 May 1988
Tampa, Florida

Captain Francis E. Kyser
Secretary-Treasurer
IOMMP
700 Maritime Blvd,
Linticum Hts., MD. 21090

Dear Captain Kyser:

I will be a candidate for International office in the IOMMP when election are held in the fall.

In order to avoid the usual diatribes and hub-bubs about election literature and when it can be sent out, I will be sending out election literature prior to the Convention and want the International office to provide me with access to the mailing list through an independent mailing service as has been provided in the past. I will make the necessary arrangements to have the literature delivered in a timely manner as soon as you provide me with the name of the service and a phone number where I can escertain the cost associated with the mailing.

Fraternally yours,

/s/ TAB
TIMOTHY A. BROWN
Offshore Membership Group
266-66-7905
4615 Navajo Ave.
Tampa, Fla. 33617

BROWN AFFIDAVIT, EXHIBIT C

02 June 1988
Tampa, Florida

Captain Robert J. Lowen
International President
IOMMP
700 Maritime Blvd.
Linticum Hts., MD. 21090

Dear Bob:

As you know, you and I are going to be opposing candidates for the Presidency of the IOMMP this fall. Given what I assume is our mutual belief that both the maritime industry and the IOMMP are approaching the endangered species list, I think it is critical that you and I work together to avoid the quadrennial madness that has weakened us internally and has weakened the way that we present ourselves to other maritime unions, to the shipping companies, to Congress, to Marad, and to the public.

A starting point is for you and I to agree on fair and early procedures for getting our different messages to the membership. The mailing list should be delivered to the mailing service within 2 weeks and the list should be divisible to allow targeted mailings dealing with particular concerns of various groups of members be they pensioners, inland members, ARA members, etc.

I intend to send my first mailing to the membership by the 6th of July. I want to make you aware of that so that you can be in a position to present your views about the same time that I am presenting mine. I think that all candidates should be invited to begin presenting their positions as early as possible and I think that the union serves its own best interests when it makes it as easy as possible for candidates to do so.

In addition, you and I should try to agree on a mutually acceptable ballot committee which will minimize distrust on all sides.

It is my intention to run a strong, vigorous, and positive campaign. Your approach and my approach to many issues are quite different and I think the members of our union are entitled to know those differences and I intend to hold your feet to the fire on all issues that are relevant to the future of our members, of our union, and of the maritime industry. But I do not think we can afford the luxury of this campaign of raising doubts about the democratic process or of engaging in character assassinations. I urge you to work with me in assuring a full, fair, and vigorous debate and an election for a change, which everyone can have confidence was conducted with the highest degree of integrity.

I have already informed Elwood with regards to my candidacy almost a month ago and have not had the courtesy of a reply. I will be calling you within the next two weeks to discuss the specifics.

Fraternally yours,

/s/ TAB
TIMOTHY A. BROWN
Offshore Membership Group
266-66-7905
4615 Navajo Ave.
Tampa, Fla. 33617

BROWN AFFIDAVIT, EXHIBIT D

[SEAL]

INTERNATIONAL ORGANIZATION OF
MASTERS, MATES & PILOTS

700 Maritime Blvd., Linthicum Heights, MD. 21090-9998
Tel. No.: (301) 850-8700
Cable: BRIDGEDECK WASHINGTON, D.C.
Telex No. 750-831/Telecopier No.: (301) 850-8725

ROBERT J. LOWEN
International President

F. ELWOOD KYSER
International Secretary-Treasurer

June 7, 1988

Captain Timothy A. Brown
4615 Navajo Avenue
Tampa, FL 33617

Dear Brother Brown:

I recently had the opportunity to see a copy of the letter you wrote to Captain Lowen dated June 2, 1988 and the attachment, which was a letter written to my office dated May 9, 1988.

I must apologize for the delay in responding to your initial letter, but I would like to take this opportunity to address your request.

Although I can understand your eagerness in wanting to send out your campaign literature early, please be advised that as soon as the rules are established for mailing campaign literature, all candidates will be notified at the same time.

As the practice has been in the past, and the Constitution prescribes, the IOMM&P Convention is the event in which all candidates officially are nominated to run for a particular office. Only after the Convention takes place,

and when the Impartial Balloting Agency is designated, will the mailing agency to handle campaign literature be designated. Please refer to Article V, Section 10 of the International Constitution. This procedure has been established so that each candidate will have a fair and equal amount of time in which to adequately reach the membership and to prohibit any one candidate from having an edge over the other.

In the meantime, I wish you good luck in your campaign, and look forward to seeing you at the 72nd Convention.

Fraternally,

/s/ F. Elwood Kyser
F. ELWOOD KYSER
International Secretary-Treasurer
and Offshore Contracts Officer

FEK: kae

BROWN AFFIDAVIT, EXHIBIT E

15 June 1988
Tampa, Florida

General Executive Board
I.O.M.M.P.
700 Maritime Blvd.
Linticum Hts., MD. 21090

Dear Sir:

I have recently been denied access to the mailing service selected by the IOMMP International Ballot Committee through the attached letter from Captain Kyser.

I demand this right as a candidate for union office in the upcoming Master Mate and Pilot Fall Election and reiterate my desire to have this matter taken care of by July 5th.

In addition, I demand that the mailing service selected be provided with "Cheshire labels" to facilitate this mailing.

Fraternally yours,

/s/ Timothy A. Brown
TIMOTHY A. BROWN
Offshore Membership Group
266-66-7905
4615 Navajo Ave.
Tampa, Fla. 33617

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civ. No. ——

TIMOTHY A. BROWN,
Plaintiff,

v.

ROBERT J. LOWEN, F. ELWOOD KYSER, and INTERNATIONAL ORGANIZATION OF MASTERS, MATES, AND PILOTS,
Defendants.

AFFIDAVIT OF PAUL ALAN LEVY

1. My name is Paul Alan Levy. This affidavit is made in support of plaintiff Timothy Brown's motion for a preliminary injunction in this case.

2. On June 27, 1988, I spoke to counsel for the defendants, Burton Epstein, Esquire, and advised him that I was representing plaintiff and that I intended to file suit promptly, but that I hoped that the union would resolve the matter internally without the need for judicial intervention. Mr. Epstein stated that Brown's request for the right to do a mailing had been placed on the agenda of a General Executive Board ("GEB") meeting scheduled for July 6, 1988, and I said that in that event I would forebear from filing suit until after that date. I confirmed our conversation by a letter of the same date, a copy of which is attached as Exhibit F (the letters of the exhibits to my affidavit are sequential to the Exhibits to plaintiff Brown's affidavit). I also supplied various legal citations to opposing counsel in an effort to persuade him to recommend to his client that it accede to Brown's request.

3. On July 6, 1988, I telephoned Mr. Epstein to learn whether the GEB had granted Brown's request. During the evening of July 6, 1988, defendant's Vice-President John Hayes, whom I represent in another matter, told me that the request had been denied. On July 7, 1988, I received a telephone message from Mr. Epstein confirming Mr. Hayes' statement.

4. An affidavit submitted by Mr. Hayes in *Hayes v. Masters, Mates & Pilots*, No. HM 87-1084 (D. Md.), states on his personal knowledge that the union has the ability to produce computerized mailing labels in a form that can be affixed to mailings by machine. A copy of the relevant pages from that affidavit is attached as Exhibit G.

5. I attach as Exhibit H a copy of a decision rendered by the United States District Court for the Northern District of Georgia in *Mims v. Teamsters Local 728*, No. C 86-454 A, which is cited in plaintiff's memorandum of law.

6. I have received from Mr. Brown an exchange of correspondence between himself and Richard Hunsucker. Mr. Hunsucker is personally known to me as the principal career Labor Department official charged with the enforcement of the union election provisions of the Landrum-Griffin Act, and I recognize both his signature and his letterhead which appear to be genuine. I attach copies of this exchange of correspondence as Exhibit I.

7. On July 11, 1988 I spoke with Mr. Epstein and told him that suit would be filed on that date, along with a motion for a preliminary injunction. I asked him whether he would accept service for the union. Mr. Epstein told me that he was not authorized to accept service, but that service would be accepted by the appropriate individuals at the union office. He indicated that I should not expect problems serving the union.

7. After I learned from Louise McKnew that the union had refused to accept service, as recounted in her affi-

davit, I received a call an individual who identified himself as Jim Nolan. Mr. Nolan said that he was a lawyer who was handling plaintiff's request for emergency relief, and asked whether a hearing had been scheduled. I responded that there was not, told him about the problems that Ms. McKnew had encountered at the union office, and asked him whether his client was going to continue to refuse service. Mr. Nolan told me that he was not authorized to take service, and that it was plaintiff's responsibility to serve the defendants. Mr. Nolan acknowledged having received some papers relating to the motion for a preliminary injunction, but emphasized that he was not agreeing that the union had been served.

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that the foregoing is true and correct. Executed on July 19, 1988.

/s/ Paul Alan Levy
PAUL ALAN LEVY

Excerpts from BROWN *v.* LOWEN

LEVY AFFIDAVIT, EXHIBIT F

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. HM 87-1084

JOHN N. HAYES, and JAMES E. LARSEN,
Plaintiffs,

v.

INTERNATIONAL ORGANIZATION OF
MASTERS, MATES & PILOTS,
Defendant.

AFFIDAVIT OF JOHN N. HAYES

This affidavit is submitted in support of plaintiffs' request for relief in the above action.

* * * *

24. Because I believe most members mark and return their ballots shortly after receiving them, it appeared to me that the union leadership was trying to make it impossible for me to communicate my own views to the membership before most of them would cast their ballots. In fact, the union has the capacity to generate labels which could be mechanically affixed to a mailing by a professional mailing service in a matter of hours. By printing the members' names and addresses on gummed labels, the union guaranteed that the job of affixing them on a mailing would have to be done manually and at greater cost to anyone wishing to oppose the leadership's referendum. And by designating the union's own printer as the one firm that a member would have to use to perform this

service, the union was probably able to assure that any opposition mailings could be delayed.

* * * *

Pursuant to 28 U.S.C. § 1746, I hereby affirm under penalty of perjury that the foregoing representations in 51 numbered paragraphs are truthful and correct.

Dated: May 15, 1987.

/s/ John N. Hayes
JOHN N. HAYES

LEVY AFFIDAVIT, EXHIBIT I

U.S. DEPARTMENT OF LABOR [SEAL]

Office of Labor-Management Standards
Washington, D.C. 20210
Reply to the Attention of:

LUE: JBF

[JULY 15, 1988]

Mr. Timothy A. Brown
4615 Navajo Avenue
Tampa, FL 33617

Dear Mr. Brown:

This is in response to your July 1 letter concerning the right of a candidate in a labor organization officer election to send out campaign literature through the facilities or services of the union.

Elections of officers of labor organizations subject to the provisions of the Labor-Management Reporting and Disclosure Act of 1959, As Amended (LMRDA), must meet certain criteria, as set forth in Title IV of the Act. The International Organization of Masters, Mates and Pilots is a union which is subject to the LMRDA.

The Assistant Secretary for Labor-Management Standards has published and publicized a series of regulations which explain the Department of Labor's positions concerning various aspects of union officer elections. Among these regulations are several which relate directly to the problem about which you wrote.

In Title 29, Code of Federal Regulations, Part 452.67 (29 CFR 452.67), the Assistant Secretary explains that unions and their officers have a duty to comply with all

reasonable requests of any candidate to distribute his campaign literature to the membership at his own expense. It is not necessary that a member must first have been officially nominated before this duty accrues. As stated in 29 CFR 452.80, "a union may reasonably require that a person be nominated in order to be elected, but may not prevent a member who actively seeks office and is otherwise qualified from taking advantage of the campaign safeguards to the Act in an effort to gain the support necessary to be nominated."

Additionally, 29 CFR 452.79 provides that there must be a reasonable period prior to the election during which candidates and their supporters may campaign. The length of that reasonable period is dependent on a number of factors including the method of nomination, the size of the union, and the geographic area in which it operates. Maritime unions generally require more time for this purpose than do land-based organizations of limited geographic jurisdiction.

The Department of Labor's position, regardless of the composition and nature of the union, is that a candidate becomes a candidate when he professes to be one and, as such, is entitled to mail his campaign literature to the members through the union's facilities but, at his own expense. Of course, it would ordinarily be unreasonable to presume that refusal to honor a mailing request which was made long before the election would be a violation of Title IV which could affect the election's outcome. Nevertheless, the fact that candidates have not been officially nominated, that an election committee or outside balloting agency has not yet been chosen or that a mailing agency has not yet been selected is not determinative. A self-professed candidate is entitled to make campaign literature mailings at his own expense and may ask to have them sent within a reasonable period of time prior to the election. A request for a mailing to be made approxi-

mately one month prior to nominations would appear to be reasonable.

Sincerely,

/s/ Richard G. Hunsucker
RICHARD G. HUNSUCKER
Director, Office of Elections, Trusteeships
and International Union Audits

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civ. No. HAR 88-1194

TIMOTHY A. BROWN,
Plaintiff,

v.

ROBERT J. LOWEN, F. ELWOOD KYSER, and
INTERNATIONAL ORGANIZATION OF MASTERS,
MATES, AND PILOTS,
Defendants.

AFFIDAVIT OF LOUISE McKNEW

1. My name is Louise McKnew. I am the administrator of Public Citizen.

2. On July 15, 1988, at approximately 4 p.m., I went to the office of the International Organization of Masters, Mates and Pilots ("IOMMP") to attempt to deliver summonses, complaints and preliminary injunction papers for the IOMMP, Robert Lowen and Elwood Kyser to those defendants, their attorneys, or anyone else authorized to accept the documents on their behalf.

3. I initially asked for Mr. Lowen, and was advised by a receptionist that he was not in his office. I then asked to see his secretary. Shortly thereafter a large, heavy-set woman came down the hall, stopping about twenty feet from me. She did not introduce herself. I introduced myself, announced my purpose, and asked if she would accept the documents I had in my hands for Mr. Lowen. She backed away from me as I walked toward her, said she would not accept anything, and rudely refused to give me her name.

4. I then asked the receptionist if she would direct me to the office of the general counsel, specifically Mr. Epstein's office. She told me that he was unavailable. I asked if I could see his secretary or his assistant and was told that they too were "out."

5. Next I asked the receptionist if she would accept the delivery on behalf of either Mr. Lowen or his attorney, and she too refused to either accept the documents or to give me her name.

6. Finally, I asked the clerk at the front desk, if she would accept the documents on behalf of Mr. Lowen, and she told me that she was authorized to accept nothing, not even Federal Express deliveries. She identified herself as Donna Blackburn.

7. I then left with the documents

> Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that the foregoing is true and correct. Executed on July 19, 1988.
>
> /s/ Louise McKnew
> LOUISE MCKNEW

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil No. HAR-88-1994

TIMOTHY A. BROWN,
Plaintiffs,

v.

ROBERT J. LOWEN, *et al.*,
Defendants.

AFFIDAVIT OF HARRY SEIDMAN

I, Harry Seidman, do hereby solemnly declare and affirm under the penalties of perjury that the following facts are true and correct.

1. I am over the age of 18 years and I am competent to be a witness. I have personal knowledge of the facts set forth in this affidavit.

2. I am Comptroller of the International Organization of Masters, Mates & Pilots and have occupied that position since September 1, 1970. As Comptroller, I assist the International Ballot Commitee in the performance of its duties.

3. In 1980, the convention was held from July 2 to July 26, 1980. The ballots were mailed to the membership on August 25, 1980.

4. In 1984, the convention was held from July 24 to July 27, 1984. The ballots were mailed to the membership on August 27, 1984.

5. The approximate cost to the organization of the 1980 election was $122,500.00. The approximate cost to the organization of the 1984 election was $129,000.00.

Dated: July 15, 1988

/s/ Harry Seidman
HARRY SEIDMAN

State of Maryland
County of Anne Arundel

Signed and sealed before me this 15 day of July, 1988.

/s/ Beverly J. Gutmann
BEVERLY J. GUTMANN
Notary Public

My commission expires July 1, 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil No. HAR88-1994

TIMOTHY A. BROWN,
Plaintiff,

v.

ROBERT J. LOWEN, *et al.*,
Defendants.

AFFIDAVIT OF ROBERT J. LOWEN

I, Robert J. Lowen, do hereby solemnly declare and affirm under the penalties of perjury that the following facts are true and correct.

1. I am over the age of 18 years and I am competent to be a witness. I have personal knowledge of the facts set forth in this affidavit.

2. I am International President of the International Organization of Masters, Mates & Pilots. I am familiar with the election procedures of the organization. Exhibit A to this affidavit is a copy of the IOMM&P Constitution.

3. Article V of the IOMM&P Constitution governs election procedures. It provides that nominations for the offices of the Organization, which include International President, International Secretary/Treasurer and eight vice presidents, are made at the regular convention preceding the election. As Article V, section 5 provides, nominations may be made in convention or may be made by petition. A member may move his own nomination. Following nomination, nominees are notified of their nomination and advised that they must accept nomina-

tion within ten days. The convention is scheduled to commence on August 22, 1988 and to last until August 24, 1988.

4. The election itself is conducted by an Impartial Balloting Agency under the supervision of the International Ballot Committee. The Ballot Committee is elected at the convention. Article 5, section 7. The Impartial Balloting Agency is also selected at the convention. Article 5, section 3f.

5. The procedure for distribution of campaign literature is set forth in Article V, section 10a of the Constitution. It is as follows:

> Any candidate desiring to distribute literature in connection with his candidacy, as provided under section 401(c) of the Labor Management Reporting and Disclosure Act of 1959, shall be required to pay in advance for the cost of such distribution. The amount shall be certified by the independent mailing service as designated by the Impartial Balloting Agency. The Impartial Balloting Agency shall make appropriate arrangements for the security of the mailing list. The Impartial Balloting Agency shall immediately notify the candidates of the name of the mailing service and the cost of distribution of the candidates literature.

6. The procedure followed under the IOMM&P Constitution for distribution of campaign literature does not permit access to the mailing list for distribution until after nominations have been made. No candidate, including incumbents, may use the mailing list for this purpose before this time. The International Ballot Committee meets after the close of the convention and reviews the qualifications of candidates to ensure their eligibility. Candidates are required to accept nomination within ten days and to certify that they are not prevented from holding office (Article V, section 5). Once

all candidates are certified, the Impartial Balloting Agency notifies all candidates at the same time of the conditions for distribution of literature. The mailing agency is selected by the Impartial Balloting Agency and is not the same mailing agency used for other communications to members.

7. Exhibit B to this affidavit is a copy of the notification sent to the candidates in the 1984 election.

8. Timothy A. Brown has campaigned for office and served as delegate to the convention in every election for the last 14 years. He holds graduate degrees from the University of Pennsylvania. He is quite familiar with the requirements for nomination and the procedures for distribution of campaign literature, and is aware that in order to obtain nomination he need only nominate himself at the convention, to which he will be a delegate.

9. By virtue of his campaign activities, Timothy A. Brown had accumulated a mailing list which includes a large number of organization members. Mr. Brown has made regular mailings using his own membership lists for many years. Exhibits C through G are copies of some of these mailings. Additionally, mailings have recently been made by others on Mr. Brown's behalf, using other mailing lists. Exhibits H and I to this affidavit are copies of some of these mailings to offshore Membership Group members, to Pacific Maritime Region members and to ships.

Dated: July 15, 1988

/s/ Robert J. Lowen
ROBERT J. LOWEN

State of Maryland
County of Anne Arundel

Signed and sealed before me this 15 day of July, 1988.

/s/ Beverly J. Gutmann,
BEVERLY J. GUMANN
Notary Public
My Commission expires July 1, 1990

LOWEN AFFIDAVIT, EXHIBIT B

[SEAL]

AMERICAN ARBITRATION ASSOCIATION
1730 Rhode Island Ave., N.W., Suite 509
Washington, D.C. 20036 (202) 296-8510

GARYLEE COX
Director
Washington, D.C. Region

August 15, 1984

The International Ballot Committee has now certified your candidacy for ———————— in this year's election. If you desire to send campaign literature to Members of the Organization, mailing labels for the Membership List will be made available to the mailing agency upon payment by you of the required fee as indicated in the attached schedule (see letter of Monarch Information Systems, Inc. dated June 22, 1984) by certified or cashier's check, or money order, made payable to the I.O.M.M.&.P. The check for these labels should be sent by certified mail to Harry Seidman, Comptroller, I.O.M.M.&P., 700 Maritime Blvd., Linthicum Heights, Md. 21090-9998. Upon receipt of such payment by the I.O.M.M.&P., the order for the labels will be placed.

After you have paid the fee for preparing the labels, your campaign literature must be delivered to Ace Advertisers Service, Inc., 200 Hudson Street, New York, New York 10013 who will then print, fold and insert your literature in the envelopes and affix stamps thereto if you so desire upon the payment to them of their required fee. Their fee schedule is also attached (see letter of Ace Advertisers' Service, Inc. dated June 20, 1984). If you prefer, however, you may insert the literature yourself and affix the stamps, thus saving part of the mailing cost and then deliver the sealed envelopes to Ace

for labeling and mailing. We must caution you, however, that according to the U. S. Postal Authorities, if you affix the postage yourself, you may not use metered postage if the meter bears a postmark other than New York City.

Although the letter from Monarch Information Systems, Inc. sets forth a price for gummed labels, the Cheshire labels are less expensive and the mailing service costs set forth in the attached letter from Ace Advertirers' Service, Inc. are based on the use of Cheshire labels. We are informed by the mailing service that the use of gummed labels will result in added costs, but if the literature is inserted by you, and depending upon the size of the stuffed envelope, the use of gummed labels may be required. We suggest you contact Ace in advance to be sure you order the proper type of mailing label.

To enable you to estimate the various costs involved, the Membership figures of the Organization are as follows:

OFFSHORE MEMBERSHIP GROUP	4834
PACIFIC MARITIME REGION	1268
ATLANTIC & GULF MARITIME REGION	1060
PILOTS MEMBERSHIP GROUP	1261
GOVERNMENT EMPLOYEES	205
COMMUNICATION/ELECTRONICS MEMBERSHIP GROUP American Radio Association-MM&P	355
GREAT LAKES & RIVERS MEMBERSHIP GROUP	374

NOTE: Since no International Organization of Masters, Mates & Pilots Election Supplement is being published and distributed, this provides an opportunity to communicate with the membership.

Sincerely yours,

/s/ Garylee Cox
GARYLEE COX
Regional Director

Enclosures

EXCERPTS FROM TRANSCRIPT OF HEARING

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil Action No. JFM 88-1994

BROWN,

Plaintiff,

v.

LOWEN, *et al.*,

Defendants.

Baltimore, Maryland

July 25, 1988

The above-captioned matter came on for hearing re Motion for Application for a Temporary Restraining Order before the Honorable J. Frederick Motz.

APPEARANCES

PAUL A. LEVY, ESQ., on behalf of the Plaintiff.

W. MICHEL PIERSON, ESQ., on behalf of the Defendant.

* * * *

[2] THE COURT: All right. Are you all going—is this all going to be a legal argument? I'm wondering whether Ms. Maraz, the courtroom clerk, needs to stay here.

MR. LEVY: Your Honor, there are—a subpoena, a trial subpoena was served on us this morning. I agreed to accept service of any trial subpoenas by facsimile machine. I was advised at what might be in a subpoena. However, given the five hours between the scheduled

hearing and the actual hearing, I have been unable to fly the [3] Plaintiff up. In my view, however, it is not the facts which they say or at least as I understand it, they say they want to get from Mr. Brown will not affect the outcome of the case.

THE COURT: Well, let's see how far we go—are there going to be exhibits or things of that nature?—

MR. PIERSON: Your Honor, I don't want to be confusing or confused, but it seems to me the Court's suggestion that we see which way it goes might be the better way to do it.

THE COURT: All right.

MR. PIERSON: As I see it—

THE COURT: All right.

MR. PIERSON: —the case possibly can be disposed of entirely on legal issues based on the affidavits that have been submitted.

THE COURT: All right. Well, that was submitted by all of them—

MR. PIERSON: Insofar as the factual conflicts, we would want the right to present evidence if they become important.

[4] THE COURT: Well, I tell you what, if you've got anything to do, why don't you—if you want to go back to your office, you can, and if I need you, I'll call you, if there are exhibits here, or else you're welcome to stay, whichever you prefer, but I can swear the witnesses—if we get witnesses, I can swear the witnesses.

* * * *

[12] [MR. PIERSON:] * * * as I say, all of this, I don't think we have to get to this point because my position is on Donovan, and it's open and shut. I mean, we've got a reasonable rule, and that's, it stops right there. But I do think that that is to the extent that we get into the equities on each side, at this point making a mailing to eight thousand members I think weighs heavily against granting this type of request, particularly when the evidence also shows, and our subpoena would go to this, also, that Mr. Brown has been, has been making mailings

to the membership through the Tim Brown Newsletter for years and years before this, and this whole picture that's created in the moving papers of the, of the beleaguered dissidents against the Union despots in the oligarchy is really, I think, a false picture. And the entire issue of communications with the membership is one I don't think that we need to get into because of the application of the Donovan case.

[13] I think it's a false picture, anyway, but that is really, that gets into disputed factual issues that the Court would need to resolve. But it seems to me at this point, as the Donovan court said, you're much better off with a rule that everybody knows what the rule is, it's been the same rule for elections and elections.

* * * *

[16] THE COURT: But the question is, is it, is it fulfilling the—is it sufficient to fulfill the purposes of the Act?

MR. PIERSON: Well, I don't know how the Court could undertake to make that determination in a vacuum, though.

THE COURT: Well, that's, that's correct.

MR. PIERSON: Now, I will say this.

[17] THE COURT: But it seems to me, it seems to me it's pretty much undisputed on the record that you have a very far-flung membership who are often not at home.

* * * *

[40] THE COURT: When was the last newsletter?

MR. PIERSON: The last Union paper? I, I'm going to have to consult with co-counsel.

Okay, there—Mr. Epstein says notice of nominations for the upcoming election went out last week. I think that's a special issue of the paper, is it not?

THE COURT: So certainly something could have been included there, we're changing our rules.

* * * *

[41] MR. PIERSON: Well, in that case, I would want, I would want the opportunity to put on evidence as

was put on in the Donovan case in terms of voting patterns in this Union and all the factors that were referred to in the Donovan case so that the Court would have a factual record to determine reasonableness, unreasonableness, instead of sitting in a vacuum and determining what's reasonable. It seems to me—

[42] THE COURT: Well, voting patterns may have something to do with it looking back over the past, but I mean, I think it's per se reasonable. I mean, in terms of—you could talk about a principle of union democracy. You're telling me that I can't say as a matter of law that it's reasonable to want to have people thinking about this a month before a convention? I mean, you know, it makes perfect sense from a political standpoint that you want the delegates, you want them to have been thinking about it before they get to the convention because then you come up and introduce yourself, and you're talking about people who presumably are leaders of the locals, that's why they've been elected as delegates, so that the dynamics, the very dynamics of the political process are such that you want to have that going at the convention. And you say I need a factual record not to say that it's reasonable to want that to happen?

MR. PIERSON: Well, the—well, yes. In the context following, is it reasonable in light of the Union rule that says it's done another way, or to turn it around the other way, is, can the Court say that the Union's rule is per se unreasonable in saying, in denying this request?

* * * *

[47] THE COURT: So what do you think? What do you think the evidence is going to show in terms of voting performance?

MR. PIERSON: I think the evidence would show that elections in the Masters, Mates & Pilots have been hotly contested for several years, that it is common in those elections that campaign literature goes out from all sorts of [48] sources before and during the balloting period, that members know that campaign literature is

going to be coming to them and expect it to come to them, and that members vote throughout the ninety-day balloting period.

THE COURT: So you would say how much time, how much time—if they want the literature, they'd have at least half, under the application procedures, so I'm clear exactly what you say the timing would be on this, for the mailing going out and then the election. You have the convention—

MR. PIERSON: The convention ends August 24th.

THE COURT: Right.

MR. PIERSON: Ballots presumably, and I'm not making a representation, I'm talking about evidence based upon the affidavit that we have submitted to the Court, I have no idea when they would go out except I know in '80 and '84 they went out thirty days, so I think the evidence shows that the ballots would be likely to go out thirty days after the convention ended.

THE COURT: All right.

MR. PIERSON: Now—

[49] THE COURT: And what's the, and the election is what? How many times, days after the election—that's what's ninety days?

MR. PIERSON: That's ninety days.

THE COURT: After the election?

MR. PIERSON: After the convention.

THE COURT: After the convention?

MR. PIERSON: No, no, no, no; after the ballots.

THE COURT: After the ballots?

MR. PIERSON: After the ballots are mailed. It's thirty days, and then the election is ninety days, continues for—

THE COURT: And when can they send out their mailings?

MR. PIERSON: Well, they can send out their mailings as soon as the impartial balloting agency selects the mailing service and then sends them the letter telling them the conditions.

Now, frankly, I'm not prepared at this moment to make a representation to the Court as to when that [50] would be. I would have to—

THE COURT: Before or after the ballots goes out?

MR. PIERSON: Oh, that's well before the ballots go out. Well before the ballots go out.

I mean, I don't, I can't guarantee the Court—what Mr. Levy was saying to the Court was that—

THE COURT: That he was saying something about cutting into the ninety days.

MR. PIERSON: What he was saying is the convention ends August the 24th and the, the—let's assume that the convention ends August the 24th and the ballots go out September the 24th, thirty days afterwards. He was saying I couldn't guarantee the Court that the literature could get, could get out a full thirty days before the ballots because they have to select the impartial mailing service, so that there could be some slippage in there in terms of that thirty days.

In other words, I'm saying to the Court that I would anticipate that he could get his literature out in the mail some period of time before the ballots go out.

[51] THE COURT: It's ninety days plus, but it's, it's going to be less than a hundred and twenty because they've got to pick—

MR. PIERSON: Right, so it would be—yeah, and I can't tell the Court how many days slippage, but it would be approximately a hundred and twenty, is the full period after the nomination and before the balloting closes.

* * * *

[61] THE COURT: Well, I'm going to grant the Order. The question clearly is not an easy one, but I think that it's appropriate here to grant the relief which the [62] Plaintiff requests.

To the extent that the cases have held that the inquiry should be simply is the Union's rule reasonable and to the extent that that holding implies that a court should

give deference to the Union's evaluation of what is appropriate in this context, I think the case is wrongly decided. The statute does draw distinctions between those which focus on reasonable rules in which you, deference certainly should be given to the Union's determination, and this situation, where the focus is not upon the Union's rule but upon the reasonableness of the request.

I'm not prepared on this short notice, at least, to articulate fully what the test should be. I think the focus of the test should be does the rule—well, let me step back for a minute.

I certainly think that they are, the Union is entitled to have a rule. I start from that premise. I think that, absent that, the Union is caught in an irreconcilable bind because I think you need to be concerned about having rules applicable to everyone, known to everyone in advance as a general proposition. I think that the [63] principles of nondiscrimination require that in any—and in light of that principle, which is entirely a proper one, any kind of reasonable management requires that the Union be allowed to have a rule.

But I think the focus of that rule needs to be, does it exclude reasonable requests? And that is a bit vague. I think Mr. Pierson has properly argued that a rule which is too vague is virtually no rule at all, and I understand that position. On the other hand, as I said, I don't think that this is an area in which the Court should give deference to the Union's rule which an inquiry, an inquiry simply saying is the rule reasonable necessarily implies.

I think it's encumbent upon the Court to take a de novo review of the rule in question and inquire, does it properly accommodate the two interests which need to be accommodated? Those of nondiscrimination, on the one hand, and secondly of preserving the principle and furthering the principle of union democracy on the other and balancing that here.

I have no doubt in my mind that the rule which [64] has been adopted by the Union is invalid because I do not

think that it provides for sufficient opportunity for communication of ideas by a candidate or a would-be candidate to provide a gestation period which democratic principles require. Indeed, I feel that so strongly and despite what I've said thus far about the fact that I think the test has been wrong, I would find here under the Third Circuit test that the rule is unreasonable.

I think that, per se, a rule which excludes preconvention mailings is unreasonable, even though the balloting is done after the election. It seems to me that the political process is such that a candidate or a would-be candidate is entitled to have union leaders coming to a convention where there is that period of exchange right there to discuss, to thing about his or her candidacy before the convention, to be able prepared to discuss it while they're there, and to give him an opportunity to persuade those leaders that he is the person who should be the candidate so they can do back to their locals and, that he has persuaded them to have, to have them espouse his cause, his or her cause.

[65] So I find that under all of those, the rule here fails. I am not going to require a bond. It seems to me that the risk of a cost of a re-election is one properly borne by the Union.

I have been concerned, in thinking about this before—I think some of my questions reflected it—I was concerned about the timing of this, all sort of from a latchet standpoint whether Mr. Brown should have brought this earlier because of the Union's, I thing in good faith, articulated concern about nondiscrimination.

But I am persuaded from what Mr. Levy told me that, in fact, Mr. Brown's timing was not inappropriate in this case. I think that a May request of the GEB was timely. I think if this case had come before me before a request had been made of the GEB, I would have said send this to the GEB, and it might have been that I would have sent them with an implicit message which might have caused them to take a different stance than

they ended up taking, but that's a, that's a different question.

It seems to me here that the question is, did Mr. Brown so delay as to make it essentially unfair and [66] against the public interest for him to succeed, and I'm persuaded that he did not, that he moved with reasonable expedition, I find he, his raised question would certainly raise, raised issues which, substantial issues going to the merits. I find that the balance of hardships weighs in his favor. But, most importantly, that the public interest and the principle of union democracy, and I have weighed against that there's nondiscrimination concern, compels the conclusion which I have reached.

So I am signing a modified Order.

MR. PIERSON: I have three matters of a technical nature, Your Honor.

THE COURT: Certainly, certainly.

MR. PI7RSON: First of all, I would assume that the Order that the Court is signing is under Rule 65-A; that is, it is a preliminary injunction and not a temporary restraining order. I just don't want to be fouled up on appealability. I mean, I'm taking it, this is an appealable Order.

THE COURT: Well, I certainly intend to make this appealable. I mean, if there's no objection to making [67] it a preliminary injunction, let's do it. I mean, I think this is a question which is appropriately reviewed by the Fourth Circuit, and so if it's necessary to make that the preliminary injunction, then let's go.

MR. LEVY: I have no objection to that, Your Honor.

THE COURT: Let's make it clear on the record that it is a preliminary injunction then and it's appealable.

MR. PIERSON: Question Two, I just want to make my position clear, I don't want to be, anybody to feel I'm sandbagging this court, is that I think the Court should hear testimony, and I've explained to the Court why. Your Honor doesn't feel it's necessary, but I just want to make that position clear on the record.

THE COURT: No, no, I thing that's—I appreciate your, your telling me that, but in terms of the proffer, I mean, but—

MR. PIERSON: Okay.

THE COURT: If there's anything that I've said which is factually inaccurate, as I say, I'm prepared to hold as a matter of law that a preconvention, a rule which [68] prevents preconvention mailings is, is, per se, invalid, so that issue is clear that—I mean, I don't think the facts would go to that issue, would they?

MR. PIERSON: I undertand that. I don't want to, in any way, argue with the Court's ruling.

THE COURT: No, no, no. I appreciate your, your wanting to do this for me.

MR. PIERSON: I'm troubled by—of course, I'm, everybody's always troubled institutionally by cases that come before the Court this quickly and are decided on affidavits and representations and that kind of thing, but I'm, I am troubled, as I indicated to the Court before, by the fact that it's, I think it really is being decided in a vacuum, and I understand the Court's position it doesn't need any more than what it had already, but—

THE COURT: I understand that, and I think—and certainly an appropriate point on appeal is that there should have been a factual record, but—

MR. PIERSON: And then third and finally is the question of stay.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civ. No. HAR 88-1994

TIMOTHY A. BROWN,
Defendants.

v.

ROBERT J. LOWEN, F. ELWOOD KYSER, and
INTERNATIONAL ORGANIZATION OF MASTERS,
MATES, AND PILOTS,
Plaintiff,

ORDER

The Court finds that plaintiff is likely to succeed on the merits, that the balance of hardships is decidedly in favor of the plaintiff, and that the public interest favors preliminary relief. Accordingly, IT IS HEREBY ORDERED THAT

1. Defendants Robert Lowen, Elwood Kyser, and International Organization of Masters, Mates, and Pilots ("IOMMP") shall, within forty-eight hours, and again in response to any future requests, deliver a set of Cheshire labels bearing the names and addresses of all members of the IOMMP who are eligible to vote in upcoming election of officers, or any groups of members requested by Brown whose names can be segregated by the computer on which the list is kept, to a mailing service which is acceptable to the parties and which is capable of mailing plaintiff Brown's literature by the use of such labels.

2. Plaintiff Brown shall pay to defendant IOMMP $100 for the cost of preparing a set of mailing labels. Plaintiff Brown shall also be responsible for all costs of the mailing service.

Dated: July 25, 1988

/s/ J. Frederick Motz
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil No. HAR-88-1994

TIMOTHY A. BROWN,

v.

ROBERT J. LOWEN, *et al.*

MEMORANDUM

The purpose of this memorandum is to restate briefly the reasons recited by this Court on the record on July 25, 1988 for the issuance of a preliminary injunction.

Plaintiff is running for president of the International Organization of Masters, Mates and Pilots ("IOMMP"). The preliminary injunction which he has sought and which this Court has issued requires defendants to mail his campaign literature to the union membership at his own expense. The critical issue presented in this case is the validity of an IOMMP rule which permits the distribution of campaign literature only after IOMMP's convention has been held and approximately ninety days before the election ballots which are distributed after the convention to the membership must be returned.

A threshold question is presented as to the standard by which this Court is to review IOMMP's rule. Defendants contend that the inquiry which his Court must make is whether the rule is "reasonable." This Court does not agree. 29 U.S.C. Section 481(c) clearly provides that unions and their officers "shall be under a duty, enforceable at the suit of any bona fide candidates . . . to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization." This mandate could not be more clear. Thus, although a union certainly may—indeed should—adopt a rule known to all candidates in advance setting forth the terms and conditions under which campaign literature will be distributed by the union, in evaluating the validity of the rule a court must inquire not simply whether the rule may be said to be "reasonable" but whether its application results in the rejection of a reasonable request made by a candidate. The IOMMP rule here in question unquestionably has that effect since the request being made by plaintiff—to distribute his campaign literature approximately one month before the union's convention is held—is clearly reasonable.

Even if the standard of review is the "reasonableness" of the IOMMP's rule, this Court finds that the rule is unreasonable.

First, a rule which prohibits pre-convention distribution of campaign literature is per se unreasonable. Although under IOMMP's constitution a candidate may self-nominate himself at the convention, the dynamics of the political process are such that in order to promote an effective candidacy, a non-incumbent candidate must have the opportunity to have the convention delegates consider the merits of his candidacy before they assemble. These delegates are leaders of their local unions, and it is obviously important to a candidate to attempt to elicit their support in order to have them work for them during the post-convention election process. It is virtually impossible for a non-incumbent candidate to engender such support at the convention itself without having had an opportunity to introduce himself and his ideas by mail-

ings made prior to the convention. A lawyer might as well walk into trial unprepared.

Second, although a ninety day period between the time that campaign literature is sent out and the time that ballots must be returned may seem reasonable on its face, it is undisputed that the nature of the work of the members of the union takes them away from home for substantial periods of time. This is the very reason for the relatively long ninety day period for the return of ballots. Under these circumstances while it may be that the campaign literature will have been distributed to the union members by the time that they exercise their vote, it is unrealistic to believe that union members will have conferred with one another concerning the merits of the respective candidacies before casting their ballots within the ninety day period. This underscores the need for an earlier mailing.

It is for these reasons that this Court entered a preliminary injunction in favor of plaintiff. This injunction is stayed pending defendants' seeking to obtain a decision from a Judge of the Fourth Circuit either reversing the granting of the injunction or continuing the stay pending review of the injunction by a full panel of the Court.

Date: July 24, 1988 /s/ J. Frederick Motz
J. FREDERICK MOTZ
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 88-2876

TIMOTHY A. BROWN,
Plaintiff-Appellee,
v.

ROBERT J. LOWEN, F. ELWOOD KYSER, and
INTERNATIONAL ORGANIZATION OF MASTERS,
MATES, AND PILOTS,
Defendants-Appellants.

Appeal from the United States District Court for the District of Maryland, at Baltimore. J. Frederick Motz, District Judge. (C.A. 88-1994-JFM)

Argued: July 28, 1988 Decided: September 14, 1988

Before RUSSELL, WIDENER and HALL, Circuit Judges.

W. Michel Pierson for Appellants. Paul Alan Levy (Arthur L. Fox, II; Alan B. Morrison, PUBLIC CITIZEN LITIGATION GROUP on brief) for Appellee.

OPINION

RUSSELL, Circuit Judge.

This appeal is from an order of the district court issuing a preliminary injunction in favor of the plaintiff, Timothy Brown. Plaintiff is a candidate for president of the International Organization of Masters, Mates and Pilots (IOMMP) of which defendant, Robert Lowen, is the current president. The district court has ordered IOMMP to provide plaintiff with mailing labels containing the names and addresses of voting members of the union. Though the order of the district judge related to an application for a preliminary injunction, the granting of the motion in effect constituted a decision on the merits. According, we have reviewed this case on the merits, doing so, we affirm the decision of the district court as one on the merits.

IOMMP is a labor organization comprised of workers in the maritime industry. The union conducts quadrennial elections of its officers. Nominations of candidates for these offices are made at the union's convention. Any eligible member of the union may be nominated. To be eligible a person need be a union member in good standing. A member may even nominate himself. Ballots containing the names of those nominated are then mailed to members of the union not sooner than ten days nor later than thirty days after the end of the convention. The union then allows ninety days from the mailing of the ballots until they must be returned.

The crux of this dispute arises from plaintiff's desire to distribute campaign literature, at his own expense, to the union's membership before the nominating convention. Only through the union can plaintiff obtain a complete list of the union membership with their addresses. However, the procedures used by the union provide that "[t]he right to distribution of literature only commences after the nomination procedure is complete."

The Labor-Management Reporting and Disclosure Act of 1959 at 29 U.S.C. § 481(c), however, provides in pertinent part that unions and their officers "shall be under a duty, enforceable at the suit of any bona fide candidate for office . . . to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization. . . ." It is on this provision of the Act that the plaintiff relies for his right to have his campaign material mailed to union members within thirty days before the quadrennial meeting of the union.

The Act seems plain on its face: If the request to distribute by one qualified to be a candidate for union office, even though he is yet to be nominated is "reasonable" the union is required to "comply with all [such] reasonable requests." This language conditions the right of the contesting union office seeker to have his campaign material distributed only on the reasonableness of his request. If his request is reasonable, the language of the statute granting the request is mandatory. Whether the request is reasonable is a matter to be determined consistent "with the Act's command to unions to conduct 'free and democratic' union elections." *Steelworkers v. Usery*, 429 U.S. 305, 309 (1977). Accordingly, it can be said that the candidate's request is reasonable the statute upholds the right of the candidate to have his request granted. Such conclusion is nothing more than a reading of the plain language of the statute and, as we said recently in *United States v. Morison*, 844 F.2d 1057, 1064 (4th Cir. 1988), when the terms of "a statute are unambiguous on their face, or in light of ordinary principles of statutory interpretation, then judicial inquiry is complete (citations omitted)." We find that whether the plaintiff is entitled to have his request granted depends entirely on whether his request may be said to be reasonable.

Our reading of the statute accords with the administrative construction of the statute's mandate as declared by the Secretary of Labor, to whom the enforcement of the statute is entrusted. The Department of Labor has repeatedly declared that the statutory command is to be observed if it is reasonable. It has stated categorically that, under its construction of the statute, the critical issue is not whether the union's rules or by-laws are reasonable (as the union argues) but whether the request of the plaintiff is reasonable, primarily in its timing. Indeed, in a letter to the union regarding this specific request of the plaintiff, the Director of the Office of Elections, Trusteeships and International Union Audits of the Department of Labor, advised that

> A self-professed candidate is entitled to make campaign literature mailings at his own expense and may ask the union to have them sent within a reasonable period of time prior to the election. In the present situation, a request for a mailing to be made approximately one month prior to nominations would appear to be reasonable. Failure or refusal by the union to honor a legitimate mailing request is a continuing violation of Title IV which might, under certain circumstances, affect the outcome of the election.

While this opinion of the Department is not binding, it is an opinion entitled to consideration by this Court and is not to be lightly disregarded.

Moreover, this opinion of the Department seems to be in clear accord with Congress' intent of "insur[ing] union democracy" in its enactment of 11 U.S.C. § 481. Professor Clyde Summers who authored a "Bill of Rights for Union Members" which formed the basis of the statute in question, has stated that "[t]he declared and unquestioned purpose of Congress was to ensure fair and democratic elections. Congress recognized that one of the major obstacles to meaningful elections was the inherent

advantage of incumbents and it sought to curb the advantage." Summers, *Democracy In A One-Party State: Perspectives From Landrum-Griffin*, 43 Md. L. Rev. 93, 117-118 (1984). When the union bureaucracy has exclusive control of the union membership lists, with addresses, as in this case, and that bureaucracy has continuous contact with the union membership and particularly the local union officers, the advantages of incumbency over any attempt of an insurgent to promote his candidacy before or after the quadrennial nominating convention of the union are obvious. By requiring unions to comply with all reasonable requests of candidates for access to the union lists these advantages of incumbency are reasonably moderated. And it was to provide that very moderation of the advantages of incumbency which was the intention of the Act.

There does not seem to be any contention that the request of the plaintiff herein is unreasonable. Nor do we understand the union to argue that plaintiff's request is unreasonable. Its position is that the union by-laws provide that "[t]he right to distribution of [campaign] literature only commences after the nomination procedure is complete." Whether intended or not, the manifest result of this is to delay the insurgent candidate in beginning his campaign and to reduce the time within which he can make his appeal to the voters. The incumbents, however, have had four years in which they have enjoyed the exclusive right to the voter lists and addresses and to cultivate their relations with the local union officers who would be expected to have the greatest influence with the rank and file. During all this time, too, the incumbents had had control over the union press and its newsletter to the members. The advantages of the union by-law to the incumbent cannot be questioned. However, the union justifies its by-law as a reasonable method of satisfying the Act's prohibition against "discrimination in favor of or against any candidate with respect to the use

of lists of members. . . ." Beyond that, it takes the position that the relevant reasonableness standard is not the one to be applied in determining the reasonableness of the insurgent's request, but is the one to be applied in determining the reasonableness of the union's restraint on the right to have his "reasonable request" granted. We are not persuaded by the union's reasoning.

In the first place, we find nothing discriminatory in granting the plaintiff's request made within thirty days of the quadrennial convention, since any candidate, whether an incumbent or an insurgent, has the same rights as the plaintiff. Granting the plaintiff's request is simply an attempt at a partial redress of the advantage the incumbent has; it is not an attempt at hobbling or gaining any advantage over any other candidate. The union has identified no way in which granting the plaintiff's request will operate as a discrimination against any other possible candidate for union office. Actually, the granting of the request simply reduces the discrimination of exclusive control by the union incumbents over the electoral lists. There is no conceivable way in which the granting of plaintiff's request will work a discrimination against any other union member.

Neither do we agree with the union that the question posed by this controversy is the reasonableness of the union's by-law. The criterion for resolving this controversy is the reasonableness of the plaintiff's request. Of course, in assessing the reasonableness of the request it is entirely proper to consider whether granting the request would work a discrimination against other candidates. But that question is to considered as a part of the question whether the plaintiff's request was reasonable. So far as we are able to understand, the union does not urge in objection to plaintiff's claim that the granting of his request will result in any discrimination. And well they could not, since any other candidate could exercise exactly the same right as that requested by the plaintiff.

It follows that we find no basis in this record for excusing the union from conforming with the plain command of the statute. It certainly stands the statute on its head to do as the union argues by making the issue the reasonableness of the union by-law rather than, as the statute declares, making the issue the reasonableness of the plaintiff's request. The command of the statute may not legitimately be subordinated to the somewhat ambiguous language of a union by-law. Such a rule would render union by-laws superior to the congressional mandate and would provide dissident unions with a ready means for nullifying the statute's command. We are not disposed to uphold such a misconception of congressional power in this field. We think the district court ruled correctly in granting relief to the plaintiff.

We are aware that our judgment is contrary to that of the Third Circuit as expressed in *Donovan v. Metropolitan District Council of Carpenters*, 797 F.2d 140 (3d Cir. 1986). In that case, the Third Circuit upheld the union's decision not to release mailing labels prior to a certain date because "[t]he union's rule here was a reasonable one." *Ibid.* at 144. As we have previously stated, we believe the test to be not whether the union's rule was reasonable but whether the candidate's request was reasonable. For this reason, we respectfully disagree with the judgment of the Third Circuit.

Accordingly, the judgment of the district court is

AFFIRMED.

HALL, Circuit Judge, dissenting:

I cannot agree with the majority that IOMMP has failed to comply with its duty to honor a reasonable request by a candidate for union office. In my view, a request for mailing that conflicts with the established internal procedures of a union is *per se* unreasonable unless the union's procedures are shown to be unfair or discriminatory. By affirming the district court's contrary conclusion, the majority has today adopted an unduly restrictive interpretation of the Labor Management Reporting and Disclosure Act ("LMRDA" or "the Act") that is inconsistent with the statutory purpose and in clear conflict with the decisions of two of our sister circuits.

As the majority correctly recognizes, the Act implements Congress' clearly expressed desire to promote "union democracy." I further agree that, as a corrollary to that goal, the statute prohibits undue electoral discrimination in favor of incumbents. Democracy, however, is not a standardless expression of majority rule but, rather, a system of ordered liberty in which the will of the electorate is determined through fair and equitable procedures. In this case there has been no finding or even persuasive suggestion that IOMMP's election procedures limiting candidate mailings until after the formal nomination process is unfair, discriminatory, or provides any undue advantage to incumbents. The majority, as did the district court, has concluded, however, that the fairness of the union's rules is irrelevant and that the reasonableness of a would-be candidate's request is to be assessed solely by examining the request itself.[1] In my view that approach is not only simplistic but also threatens the broader goals of the Act.

[1] Contrary to the majority's suggestion, the union has sought to argue that appellee's request for mailing was unreasonable. The union simply bases its argument, in a broader context, than the majority is willing to consider.

In the first instance, the reasonablessness of any action requires consideration of the underlying factual context. A request to light a candle in a darkened room may seem eminently reasonable if examined in isolation but when the same request is made in a room filled with gas fumes, the reaonableness is substantially diminished. While appellee Brown's request that the union mail his campaign literature without regard to its established procedure may have carried less explosive potential, the request was nontheless a clear threat to the union's ability to organize its own internal affairs.

The Supreme Court has recognized that the LMRDA was not intended to "undermine union self-government." *United Steelworkers of America v. Sadlowski*, 457 U.S. 102, 117 (1982). Moreover, the Court noted that although incumbency carries certain undoubted natural advantages, it should not be overstated. *Id.* at 114. Logically, the Act does not sanction judicial intrusion into union internal matters unless the union has unfairly distorted the normal democratic process to favor incumbents. I can see no indication that IOMMP's rules which appellee seeks to avoid would accomplish that end.

Both the Third Circuit in *Donovan v. Metropolitan District Council of Carpenters*, 797 F.2d 140 (3d Cir. 1986), and Ninth Circuit in *Marshall v. Provision House Workers Union, Local 274, Amalgamated Meat Cutters and Butcher Workers*, 623 F.2d 1322 (9th Cir. 1980), have concluded that a candidate's compliance with reasonable nondiscriminatory union procedures is relevant to whether a mailing request is itself reasonable. I would agree completely with the *Donovan* court that fair uniform rules which avoid even the "appearance of disparate treatment" and minimize the likelihood of "needless judicial second guessing." *Donovan*, 797 F.2d at 144 are not to be treated lightly in judicial proceedings.

In contrast to the salutary doctrine developed in the Third and Ninth Circuits, the majority has concluded that

unions are without power to structure their own electoral process even when that process serves the Act's broader purposes of promoting union democracy. I cannot accept this section 481(c) of the statute requires such an irrational result.[2] Accordingly, I would reverse the district court and, therefore, I respectfully dissent from the majority's decision.

[2] I find little significance in the fact that the Secretary of Labor has taken a position in this case similar to that articulated by the majority. While the views of the administrative agency to which statutory enforcement is entrusted are entitled to some deference, we need not accept those views blindly. In this instance, the Secretary's position is not only contrary to reasonable statutory interpretation, it is also arguably in conflict with his own regulations. At 29 C.F.R. § 452.67, the Department of Labor clearly envisions that distribution of campaign literature may be subject to rules governing the methods of distribution and requires the union to inform all candidates of the nature of those conditions. The Secretary's instant position renders any such distribution rules superfluous.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 88-2876

TIMOTHY A. BROWN,
Plaintiff-Appellee,

v.

ROBERT J. LOWEN, F. ELWOOD KYSER,
INTERNATIONAL ORGANIZATION OF MASTERS,
MATES AND PILOTS,
Defendant-Appellants.

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING IN BANC

Argued: April 10, 1989 Decided: November 17, 1989

Before ERVIN, Chief Judge, and RUSSELL, WIDENER, HALL, PHILLIPS, MURNAGHAN, SPROUSE, CHAPMAN, WILKINSON, and WILKINS, Circuit Judges.

W. Michel Pierson for Appellant. Paul Alan Levy (Arthur L. Fox, II, Alan B. Morrison, PUBLIC CITIZEN LITIGATION GROUP, on brief) for Appellee. Helen Boetticher, Counsel for Litigation (Jerry G. Thorn, Acting Solicitor; John F. Depenbrock, Associate Solicitor;

Barton S. Widom, Deputy Associate Solicitor; Sharon E. Hanley, U.S. DEPARTMENT OF LABOR, on brief) for Amicus Curiae.

PER CURAM:

The en banc court adopts the majority panel opinion sustaining the district court's grant of an affirmative injunction in favor of the plaintiff-appellee against the defendant's appellants, as its opinion herein. *Brown v. Lowen*, 857 F.2d 216 (4th Cir. 1989). Judge Hall, however, adheres to his dissent to the panel opinion and relies on it in dissent to the en banc decision herein, and Judge Phillips in joining Judge Hall's dissent has filed a separate dissenting statement of his views.

AFFIRMED.

PHILLIPS, Circuit Judge, dissenting:

I agree with Judge Hall's view, and that of the Third and Ninth Circuits, as I understand them, that the first step in assessing the reasonablessness, under § 481(c), of a candidate's request that is at odds with a union's general rule on the subject, is to consider whether the general rule is unfair or arbitrary in its general application. If a union's general rule is not unfair or arbitrary in its general application, then a candidate's request to be exempted from its requirements is obviously "unresonable." If this is not so, then there is little reason for unions to attempt to regulate election procedures by general rules. All of us can probably demonstrate from time to time that general rules of one kind or another—from traffic laws to income tax laws—are unreasonable in their particular applications to us, hence that our request for specific exemptions would be "reasonable" if assessed independently of the general rule's justification. For democracy to work in union affairs as in affairs at large, however, it must be considered unreasonable for

an individual to insist upon being made a special case, exempt from the requirements of general laws that are not fair or arbitrary in their general application.

Because the district court failed to apply this principle, I would vacate the preliminary injunction and remand for further proceedings faithful to it.